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ARKANSAS CODE OF 1987 ANNOTATED



VOLUME 9 1998 Replacement TITLE 14: LOCAL GOVERNMENT (CHAPTERS 1-53)

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Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 1997 Regular Session. Annotations are to the following sources:

Arkansas Advance Reports through 330 Ark. 497 and 59 Ark. App. 162.

Federal Supplement through Volume 974, p. 790.

Federal Reporter 3rd Series through Volume 124, p. 1482.

United States Supreme Court Reports, Lawyers' Edition, 2nd Series through Volume 138, p. 1034.

Bankruptcy Reporter through Volume 213, p. 49.

Arkansas Law Notes through the 1997 Edition.

Arkansas Law Review through Volume 49, p. 670.

University of Arkansas at Little Rock Law Journal through Volume 19, p. 540.

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| 3. Alcoholic Beverages | 17. Professions, Occupations, and Businesses |
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User's Guide

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of Volume 1 of the Code.

TITLE 14

LOCAL GOVERNMENT

(CHAPTERS 54-103 IN VOLUME 10; CHAPTERS 104-182
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Cross References. Annual list of eligible banks for deposits by local governments, § 19-8-105. Immunity from tort liability, § 16-120-101 et seq.

Emergency temporary location for political subdivisions, § 14-14-308.

CHAPTER 1**GENERAL PROVISIONS**

[Reserved]

CHAPTER 2**PUBLIC RECORDS GENERALLY**

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. REPRODUCTION OF RECORDS.

Cross References. Public Records Management and Archives, § 13-4-101 et seq.

RESEARCH REFERENCES

Am. Jur. 37A Am. Jur. 2d, F.O.I. Acts, § 14.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

14-2-101. Recording personality in only one district.

SECTION.

14-2-102. Records of military discharges.

Effective Dates. Acts 1941, No. 277, § 2: approved Mar. 26, 1941. Emergency clause provided: "The legislature having found that this act is necessary for the benefit of the people of the State of Arkansas, and in order to save them much trouble and expense, it is further found that an emergency exists, and this act being necessary for the public peace, health and safety, an emergency is hereby

declared, and this act shall become in full force and effect from and after its passage."

Acts 1943, No. 147, § 4: approved Mar. 4, 1943. Emergency clause provided: "This Act being necessary for the immediate preservation of public peace, health, and safety, an emergency is hereby declared to exist and this Act shall take effect and be in force from and after its passage."

14-2-101. Recording personality in only one district.

(a) In counties within the State of Arkansas which have two (2) or more districts with two (2) or more county sites, where it is necessary to record certain written instruments affecting personal property as provided by law, the recording shall be necessary in only one (1) district of the county.

(b) The written instruments affecting personal property shall be recorded or filed for record in the district where the person executing the instrument resides, and it shall not be necessary to make any additional record thereof in the same county.

History. Acts 1941, No. 277, § 1; A.S.A. 1947, § 16-304.

Records in multiple judicial districts, § 14-15-901.

Cross References. Recorders, § 14-15-401 et seq.

CASE NOTES

Sebastian County.

The two districts of Sebastian County are, in effect, separate counties, so far as

the recording requirements of § 18-50-103 are involved. *Henson v. Fleet Mtg. Co.*, 319 Ark. 491, 892 S.W.2d 250 (1995).

14-2-102. Records of military discharges.

(a) It shall be the duty of the quorum court in each county of the State of Arkansas to appropriate from any moneys in the general fund any sum as may be necessary, not exceeding in any county the sum of one hundred (\$100) dollars, for providing a suitable record book for the purpose of recording military certificates of discharge.

(b) The record shall contain a complete copy of discharges and shall contain an index of the names of the discharged soldiers, sailors, airmen, marines, members of the Coast Guard, merchant marines, members of the Women's Army Auxiliary Corps, Women's Auxiliary Volunteer for Emergency Service, nurses, and members of all other branches of the armed forces with reference to page, alphabetically arranged.

History. Acts 1943, No. 147, § 3; A.S.A. 1947, § 11-1707.

Cross References. Recording certificate of discharge, § 12-62-411.

SUBCHAPTER 2 — REPRODUCTION OF RECORDS**SECTION.**

14-2-201. Authority — Requirements.

14-2-202. Copy of record — Admissibility.

SECTION.

14-2-203. Disposal, etc. of copied records.

Publisher's Notes. Acts 1947, No. 218, is also codified as § 25-18-101.

Effective Dates. Acts 1947, No. 218, § 6: Mar. 18, 1947. Emergency clause provided: "There being no provision of law whereby photostatic microfilm or photographic reproductions of writings, documents, or records may be admissible in evidence, and because facilities for storage of public records are now taxed to capac-

ity; and because space must be provided for such public records and because it is necessary for the immediate preservation of the public peace, health and safety of the inhabitants of the state; an emergency exists within the meaning of the Constitution and this Act shall be in full force and effect from and after its passage and approval."

14-2-201. Authority — Requirements.

(a) The head of any county or municipal department, commission, bureau, or board may cause any or all records kept by the official, department, commission, or board to be photographed, microfilmed, photostated, or reproduced on film.

(b) At the time of reproduction, the agency head shall attach his certificate to the record certifying that it is the original record, and the certificate shall be reproduced with the original.

(c)(1) The film or reproducing material shall be of durable material.

(2) The device used to reproduce the records on the film or material shall be such as to accurately reproduce and perpetuate the original records in all details.

History. Acts 1947, No. 218, § 1; A.S.A. 1947, § 16-501. **Cross References.** Photographic recording authorized, § 16-46-101.

14-2-202. Copy of record — Admissibility.

- (a) A photostatic copy, photograph, microfilm, or photographic film of original records shall be deemed to be an original record for all purposes and shall be admissible in evidence in all courts or administrative agencies.
- (b) For all purposes recited in this section, a facsimile, exemplification, or certified copy thereof shall be deemed to be a transcript, exemplification, or certified copy of the original.

History. Acts 1947, No. 218, § 2; A.S.A. 1947, § 16-502. **Cross References.** Photographic images of checks, § 14-21-108.

14-2-203. Disposal, etc. of copied records.

Whenever photostatic copies, photographs, microfilms, or reproductions on films of public records shall be placed in conveniently accessible files and provision made for preserving, examining, and using them, the head of a county office or department or city office or department may certify those facts to the county court or to the mayor of a municipality, respectively, who shall have the power to authorize the disposal, archival storage, or destruction of the records.

History. Acts 1947, No. 218, § 4; A.S.A. 1947, § 16-504.

CHAPTERS 3-12

[Reserved]

SUBTITLE 2. COUNTY GOVERNMENT

CHAPTER 13

GENERAL PROVISIONS

[Reserved]

CHAPTER 14

COUNTY GOVERNMENT CODE

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. BOUNDARIES.
3. COUNTY SEATS.
4. QUORUM COURT DISTRICTS.
5. ORGANIZATION GENERALLY.
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SUBCHAPTER.

8. LEGISLATIVE POWERS.
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10. JUDICIAL POWERS.
11. EXECUTIVE POWERS.
12. PERSONNEL PROCEDURES.
13. OFFICERS GENERALLY.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-10, 12, 13, and §§ 14-14-1101 to 14-14-1106 may not ap-

ply to §§ 14-14-812 and 14-14-1107 which were enacted subsequently.

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp. & Coun., § 1 et seq.

CASE NOTES

ANALYSIS

In general.
Elections.

In General.

The enabling legislation for Ark. Const. Amend. 55 was Acts 1977, No. 742, now codified as this chapter. *Venhaus v. Adams*, 295 Ark. 606, 752 S.W.2d 20 (1988).

Elections.

The amount allowed for voting machine preparation is not fixed by state law, and

there is nothing in Ark. Const. Amend. 55, the revision of county government amendment, and nothing in this chapter, to prohibit or curtail the power of the quorum court from exercising its discretion on the amount to be allowed, so long as it is reasonable. *Union County v. Union County Election Comm'n*, 274 Ark. 286, 623 S.W.2d 827 (1981).

Cited: *Kreutzer v. Clark*, 271 Ark. 243, 607 S.W.2d 670 (1980).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 14-14-101. Title.
- 14-14-102. County defined.
- 14-14-103. Construction.
- 14-14-104. Publication requirements.
- 14-14-105. Notice by publication.

SECTION.

- 14-14-106. Notice by mailing.
- 14-14-107. Petitions.
- 14-14-108. Public hearings.
- 14-14-109. Public meetings.
- 14-14-110. Public records.

Cross References. Local Governmental Compliance Act, § 10-4-301 et seq.

Effective Dates. Acts 1977, No. 742, § 118: Mar. 24, 1977. Emergency clause provided: "It is hereby found by the General Assembly that the passage of Amendment 55 to the Arkansas Constitution has caused major changes in the structure of

county government and that, because of said changes, a need exists to modernize laws affecting county government. It is further found that the citizens of the several counties of the State are in need of services provided by county governments and said services can best be provided under the provisions of this Act. There-

fore, an emergency is hereby declared to exist and this Act, being necessary for the public health, welfare and safety, shall be in effect from and after its passage and approval.”

14-14-101. Title.

This chapter constitutes the Arkansas “County Government Code.”

History. Acts 1977, No. 742, § 1;
A.S.A. 1947, § 17-3101.

CASE NOTES

Cited: Arkansas County v. Burris, 308 Ark. 490, 825 S.W.2d 590 (1992).

14-14-102. County defined.

A county is a political subdivision of the state for the more convenient administration of justice and the exercise of local legislative authority related to county affairs and is defined as a body politic and corporate operating within specified geographic limitations established by law.

History. Acts 1977, No. 742, § 11;
A.S.A. 1947, § 17-3201.

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law,
Public Law, 1 UALR L.J. 230.

CASE NOTES

Cited: Mosier v. Robinson, 722 F. Supp. 555 (W.D. Ark. 1989).

14-14-103. Construction.

(a) Except when a specific definition is given or a technical interpretation is required, words and phrases used in this chapter shall be construed according to their ordinary usage in the English language.

(b) Words in the present tense include the future tense.

History. Acts 1977, No. 742, § 2;
A.S.A. 1947, § 17-3102.

14-14-104. Publication requirements.

(a) Unless otherwise specifically provided, when a county government is required to publish, publication shall be by a one-time insertion in a newspaper of general circulation in the county.

(b) Where no newspaper of general circulation exists in a county, publication may be made by posting in three (3) public places which have been designated by ordinance.

History. Acts 1977, No. 742, § 3;
A.S.A. 1947, § 17-3103.

14-14-105. Notice by publication.

Unless otherwise specifically provided, when notice of a hearing or other official act is required by a county government, the following provisions shall apply:

(1) The notice shall be published two (2) times with at least six (6) days separating each publication. The first publication shall be no more than thirty (30) days prior to the action, and the last publication shall be no less than three (3) days prior to the action;

(2) The published notice shall contain:

(A) The date, time, and place at which the hearing or other action will occur;

(B) A brief statement of the action to be taken; and

(C) Any other information which may be required by the specific provision of law requiring notice.

History. Acts 1977, No. 742, § 4;
A.S.A. 1947, § 17-3104.

14-14-106. Notice by mailing.

(a)(1) Notice by mailing shall be as provided by law or the ordinance of the county quorum court providing for notice by mailing.

(2) In those instances where a county government requires that notice of hearing or other official act be given by mail and the procedures therefor are not set forth by law or ordinance, the notice by mailing shall be made not less than seven (7) days nor more than thirty (30) days prior to the action to be taken, and the requirements of the notice shall be met by:

(A) Deposit of the notice properly addressed in the United States mail, with postage paid at the first-class rate;

(B) Sending the notice by registered or certified mail rather than first class; or

(C) Mailing the notice at the bulk rate instead of first class when notice is to be given by mail to all electors or residents of a county government.

(b) All notices by mailing shall contain:

(1) The date, time, and place at which the hearing or other action will be taken;

- (2) A brief statement of the action to be taken; and
- (3) Any other information required by the specific section requiring mail notice.

History. Acts 1977, No. 742, § 5; 1979, No. 413, § 1; A.S.A. 1947, § 17-3105.

14-14-107. Petitions.

(a) **REQUIREMENTS.** Whenever a petition is authorized in the conduct of county affairs, except initiative and referendum petitions as provided in §§ 14-14-914 — 14-14-918, unless the statute authorizing the petition establishes different criteria, the petition shall be valid if it is signed by fifteen percent (15%) of the qualified electors of the county or portion of the county affected by the petition, with the number of electors of the county or portion of the county to be determined in the manner set forth in subdivision (6) of this subsection, and if the petition meets the following requirements:

(1) **QUALIFIED ELECTORS.** Petitions shall be signed only by qualified electors of the county in which the measure of local application is sought by petition. A qualified elector shall be defined as any person duly registered and qualified to vote pursuant to the provisions of Arkansas Constitution, Amendment 51;

(2)(A) **SIGNATURES.** The signatures on all petitions shall be the signatures evidenced by voter registration. A signature which is in substantial compliance with these requirements and which is readily identifiable from the additional information required from the signer on the petition shall be counted as sufficient;

(B) **PENALTY FOR FRAUDULENT SIGNATURE.** Any person who shall sign any name other than his own to a petition, who shall knowingly sign his name more than once for the same measure, or who shall sign the petition when he is not a legal voter of the county when the measure is of local application to the county only shall be guilty of a felony and may be imprisoned in the state penitentiary for not less than one (1) year nor more than five (5) years;

(3) **STATEMENT OF PURPOSE.** The petition shall contain a statement of the purpose for which it is circulated sufficient to meet the specific criteria set out in the statute authorizing the petition;

(4) **FILING OF PETITIONS.** All petitions relating to county affairs shall be directed to the judge of the county court and filed with the county clerk. All petitions, upon verification of sufficiency by the county clerk, shall be referred to the county quorum court during the next regular meeting of that body for consideration and disposition. However, a special meeting of the quorum court may be called as provided by law for the consideration and disposition of petitions;

(5) **VERIFICATION OF PETITIONS.** Only legal voters shall be counted upon petitions. Petitions may be circulated and presented in parts, but each part of any petition shall have attached thereto the affidavit of the persons circulating them affirming that:

(A) All signatures thereon were made in the presence of the affiant; and

(B) To the best of the affiant's knowledge and belief, each signature is genuine and the person signing is a legal voter.

No other affidavit or verification shall be required to establish the genuineness of such signatures;

(6) SUFFICIENCY OF PETITIONS. The sufficiency of all county petitions shall be decided in the first instance by the county clerk, subject to review by the chancery court. The number of signatures required in a county petition shall be based on the total number of votes cast in the last general election for the office of circuit clerk, or the Office of Governor in cases where the office of circuit clerk may have been abolished;

(7) CHALLENGE OF PETITION. If the sufficiency of any petition is challenged, that cause shall be a preference cause and shall be tried at once. However, the failure of the courts to reach a decision prior to the election, if an election is required, as to the sufficiency of any petition shall not prevent the question from being placed upon the ballot at the election named in the petition, nor militate against the validity of the measure if it shall have been approved by a vote of the people;

(8) AMENDMENT OF PETITIONS. If the county clerk shall decide any petition to be insufficient, he shall, without delay, notify the sponsors of the petition and permit at least thirty (30) days from the date of the notification for correction. In the event of legal proceedings to prevent giving legal effect to any petition upon any grounds, the burden of proof shall be upon the person attacking the validity of the petition.

(b)(1) UNWARRANTED RESTRICTIONS PROHIBITED. No law shall be passed to prohibit any person from giving or receiving compensation for circulating petitions, nor to prohibit the circulation of petitions, nor in any manner to interfere with the freedom of the people in procuring petitions.

(2) Laws shall be enacted prohibiting and penalizing perjury, forgery, and all other felonies or other fraudulent practices in the securing of signatures or filing of petitions.

(c) DECLARATION OF SUFFICIENCY. Within ten (10) calendar days from the date a petition was filed with the county clerk, the clerk shall determine the adequacy of the petition.

(d) WITHDRAWAL OF SIGNATURES. Any person may in writing withdraw his signature from a petition at any time prior to the time of filing the petition with the county clerk. Unless otherwise specifically provided by law, no elector shall be permitted to withdraw his signature from a petition after it has been filed.

(e) PUBLICATION; COSTS. All petitions under the provisions of this section shall be published as provided by law. All costs of any petition shall be borne by the petitioners.

14-14-108. Public hearings.

Unless otherwise specifically provided, when a county court or county quorum court is required to conduct a public hearing for the purpose of providing reasonable opportunity for citizen participation prior to any final decision by either court, the hearing shall meet the following requirements:

(1) At a minimum, a public hearing shall provide for submission of both oral and written testimony for and against the action or matter at issue. If the hearing is not held before the ultimate decisionmakers, provision shall be made for the transmittal of a summary or transcript of the testimony received to the ultimate decisionmakers prior to their determination;

(2) Public hearings may be held at regular or special meetings of each of the courts;

(3) The person or authority holding the public hearing may include in the notice calling the hearing any special procedures or guidelines to be followed at the hearing;

(4) Petitions and letters received by the respective body conducting a public hearing prior to the hearing shall be entered into the minutes of the hearing and considered as other testimony received at the hearing;

(5) Except for budget and appropriation hearings, the quorum court may designate a subcommittee to conduct any public hearings on county legislative affairs.

History. Acts 1977, No. 742, § 7; 1979, No. 413, § 3; A.S.A. 1947, § 17-3107.

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

14-14-109. Public meetings.

(a)(1) All meetings of a county government governing body, board, committee, or any other entity created by, or subordinate to, a county government shall be open to the public except as provided in subdivision (2) of this subsection.

(2) A meeting, or part of a meeting, which involves or affects the employment, appointment, promotion, demotion, disciplining, dismissal, or resignation of a county government official or employee need not be open to the public unless the local government officer or employee requests a public meeting.

(b) In any meeting required to be open to the public, the county quorum court, committee, board, or other entity shall adopt rules for conducting the meeting which afford citizens a reasonable opportunity to participate prior to the final decision.

(c) Appropriate minutes shall be kept of all public meetings and shall be made available to the public for inspection and copying.

History. Acts 1977, No. 742, §§ 8, 9;
A.S.A. 1947, §§ 17-3108, 17-3109.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

CASE NOTES

Cited: Baxter County Newspapers, Inc. v. Medical Staff of Baxter Gen. Hosp., 273 Ark. 511, 622 S.W.2d 495 (1981).

14-14-110. Public records.

(a) Except as provided in subsection (b) of this section, all records and other written materials in the possession of a local government shall be available for inspection and copying by any person during normal office hours.

(b) Personal records, medical records, and other records which relate to matters in which the right to individual privacy exceeds the merits of public disclosure shall not be available to the public unless the person they concern requests they be made public.

History. Acts 1977, No. 742, § 10;
A.S.A. 1947, § 17-3110.

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

SUBCHAPTER 2 — BOUNDARIES

SECTION.

- 14-14-201. Power to change.
- 14-14-202. Initiation of alteration.
- 14-14-203. Petition to General Assembly.
- 14-14-204. Accompanying documentation.

SECTION.

- 14-14-205. Costs.
- 14-14-206. Apportionment of property and indebtedness.

Effective Dates. Acts 1977, No. 742, § 118: Mar. 24, 1977. Emergency clause provided: "It is hereby found by the General Assembly that the passage of Amendment 55 to the Arkansas Constitution has caused major changes in the structure of county government and that, because of said changes, a need exists to modernize laws affecting county government. It is further found that the citizens of the sev-

eral counties of the State are in need of services provided by county governments and said services can best be provided under the provisions of this Act. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the public health, welfare and safety, shall be in effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., § 39 et seq. **C.J.S.** 20 C.J.S., Counties, § 14 et seq.

14-14-201. Power to change.

(a) The power to change county boundaries is inherent in the General Assembly, subject to express constitutional restrictions.

(b)(1) No county now established shall be reduced to an area of less than six hundred (600) square miles nor to less than five thousand (5,000) inhabitants; nor shall any new county be established with less than six hundred (600) square miles and five thousand (5,000) inhabitants.

(2) This section shall not apply to the counties of Lafayette, Pope, and Johnson, nor be so construed as to prevent the General Assembly from changing the line between the counties of Pope and Johnson.

(c) No part of a county shall be taken off to form a new county, or a part thereof, without the consent of a majority of voters in the part to be taken off.

(d) In the formation of new counties, no line thereof shall run within ten (10) miles of the county seat of the county proposed to be divided, except the county seat of Lafayette County.

(e) Sebastian County may have two (2) districts and two (2) county seats, at which county, probate, and circuit courts shall be held as may be provided by law, each district paying its own expenses. However, nothing in this section shall be construed as requiring Sebastian County to maintain two (2) districts or two (2) county seats, nor construed as authorizing the establishment of two (2) county quorum courts and two (2) county courts.

History. Acts 1977, No. 742, §§ 12-16; A.S.A. 1947, § 17-3202.

CASE NOTES

ANALYSIS

In general.
Area.
New counties.
Sebastian county.

In General.

The power to change county lines is inherent in the General Assembly, subject to express constitutional restrictions and the essential requisites of the state that are implied in our form of government. Reynolds v. Holland, 35 Ark. 56 (1879); Pulaski County v. County Judge, 37 Ark. 339 (1881) (decisions under prior law).

Area.

An act of the General Assembly reducing a county below 600 square miles is unconstitutional. Bittle v. Stuart, 34 Ark. 224 (1879) (decision under prior law).

New Counties.

Consent of a majority of voters in part taken off is only required in the case of new counties to be formed out of portions of old ones. Reynolds v. Holland, 35 Ark. 56 (1879); Pulaski County v. County Judge, 37 Ark. 339 (1881) (decisions under prior law).

Sebastian County.

The two districts of Sebastian County are, in effect, separate counties, so far as the recording requirements of § 18-50-103 are involved. *Henson v. Fleet Mtg. Co.*, 319 Ark. 491, 892 S.W.2d 250 (1995).

Cited: In re Wallace, 61 Bankr. 54 (Bankr. W.D. Ark. 1986); In re Henson, 157 Bankr. 867 (Bankr. W.D. Ark. 1993).

14-14-202. Initiation of alteration.

Alteration of county boundaries may be initiated by the General Assembly or by a petition to the General Assembly by persons whose rights and interests would be affected by the boundary change.

History. Acts 1977, No. 742, § 17;
A.S.A. 1947, § 17-3203.

CASE NOTES**Boundary Disputes.**

Disputes as to county line boundaries may be decided by a court in suit between individuals, though counties are not par-

ties to the action. *Pruitt v. Sebastian County Coal & Mining Co.*, 215 Ark. 673, 222 S.W.2d 50 (1949) (decision under prior law).

14-14-203. Petition to General Assembly.

(a)(1)(A) A petition signed by not less than fifteen percent (15%) of the legal voters residing in the areas to be affected by a proposed county boundary change may be submitted to the General Assembly for consideration.

(B) A petition to form a new county shall be preceded by an election on the issue and consent by the majority of the voters in the part proposed to be taken off.

(2) The number of signatures required upon any petition shall be computed pursuant to subdivision (a)(1)(A) of this section as a percentage of the total vote cast for the office of Governor at the preceding general election in the various townships affected by the petition.

(b) All petitions under the provisions of this section shall be published as provided by law.

History. Acts 1977, No. 742, §§ 18, 19;
A.S.A. 1947, §§ 17-3204, 17-3205.

14-14-204. Accompanying documentation.

Petitions for the alteration of county boundaries shall be accompanied by the following documentation:

(1) A survey of the proposed boundary alterations, except where common boundaries are being dissolved. The survey shall be performed by a registered land surveyor of the State of Arkansas;

(2) A map drawn to scale of the area affected by the petition.

History. Acts 1977, No. 742, § 20;
A.S.A. 1947, § 17-3206.

14-14-205. Costs.

All costs of petitions, surveys, and mapping shall be borne by the petitioners.

History. Acts 1977, No. 742, § 21;
A.S.A. 1947, § 17-3207.

14-14-206. Apportionment of property and indebtedness.

All property, bonded indebtedness, and outstanding indebtedness of counties affected by a change in boundaries shall be apportioned by the General Assembly.

History. Acts 1977, No. 742, § 22;
A.S.A. 1947, § 17-3208.

CASE NOTES**ANALYSIS**

In general.
Bonded indebtedness.
Outstanding indebtedness.

In General.

When a county was divided, the old county would, without statutory provision, retain the property and remain liable for the debts of the county, and the severed part or new county would be released; however, it was competent for the General Assembly to apportion the property and the burden between the old and the new counties, as it deemed proper, and compel taxation for that purpose. *Eagle v. Beard*, 33 Ark. 497 (1878); *Lee County v. State ex rel. Phillips County*, 36 Ark. 276 (1880); *Pulaski County v. County Judge*, 37 Ark. 339 (1881) (decisions under prior law).

Apportionment may be done by a subsequent General Assembly. *Perry County v. Conway County*, 52 Ark. 430, 12 S.W. 877 (1890) (decision under prior law).

Bonded Indebtedness.

In apportioning the bonded indebtedness between a new county and an old

county, under the act creating the former, the date of the negotiation of the bonds was held to be the time of the creation of the county's debt, and the new county was held to be only liable for its proportion of the bonds negotiated before its formation, although all may have been issued. *Hempstead County v. Howard County*, 51 Ark. 344, 11 S.W. 478 (1889) (decision under prior law).

The apportionment of interest goes with the bond. *Hempstead County v. Howard County*, 51 Ark. 344, 11 S.W. 478 (1889) (decision under prior law).

Outstanding Indebtedness.

Claims of a county for proportioned indebtedness under a special act do not have to be authenticated and presented to a county court as others claim. *Perry County v. Conway County*, 52 Ark. 430, 12 S.W. 877 (1890) (decision under prior law).

Judgment against parent county, rendered subsequent to division on obligations existing prior to division, is proportionately binding on new county. *Garland County v. Hot Spring County*, 68 Ark. 83, 56 S.W. 636 (1900) (decision under prior law).

SUBCHAPTER 3 — COUNTY SEATS**SECTION.**

- 14-14-301. Definition.
- 14-14-302. Establishment or change.
- 14-14-303. Petition for change.
- 14-14-304. Form of ballots.

SECTION.

- 14-14-305. Designation of new site.
- 14-14-306. Deed to county required.
- 14-14-307. Temporary location of county seat for new county.

SECTION.

14-14-308. Emergency temporary location for political subdivisions.

Cross References. Change of county seat, Ark. Const., Art. 13, § 3.

County buildings, § 14-19-101 et seq.

Effective Dates. Acts 1875, No. 86, § 13, p. 201: in force from and after its passage. Approved March 2, 1875.

Acts 1977, No. 742, § 118: Mar. 24, 1977. Emergency clause provided: "It is hereby found by the General Assembly that the passage of Amendment 55 to the Arkansas Constitution has caused major changes in the structure of county govern-

ment and that, because of said changes, a need exists to modernize laws affecting county government. It is further found that the citizens of the several counties of the State are in need of services provided by county governments and said services can best be provided under the provisions of this Act. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the public health, welfare and safety, shall be in effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., § 44 et seq.

C.J.S. 20 C.J.S., Counties, § 53 et seq.

14-14-301. Definition.

(a) A "county seat" shall be defined as the principal site for the conducting of county affairs and maintaining records of the various courts.

(b) Nothing in this section, however, shall be construed as a limitation on a county to maintain several sites throughout the county for the conducting of county affairs.

History. Acts 1977, No. 742, § 23; A.S.A. 1947, § 17-3301.

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

14-14-302. Establishment or change.

(a) Unless for the purpose of the temporary location of county seats in the formation of new counties, it shall be unlawful to establish or change any county seat in this state without the consent of a majority of the qualified voters of the county to be affected by the change; nor will a county seat be located until the place at which it is proposed to establish or change any county seat shall be fully designated, with the designation embracing a complete and intelligible description of the proposed locations, together with an abstract of the title thereto, and

the terms and conditions upon which it can be purchased or donated by or to the county.

(b) The county court shall not order the election provided in this subchapter unless it shall be satisfied that a good and valid title can and will be made to the proposed new locations or one (1) of them.

History. Acts 1977, No. 742, § 24;
A.S.A. 1947, § 17-3302.

CASE NOTES

ANALYSIS

Change.
Title.

Change.

Since the judgment of a county court directing the removal of the county seat is self-executing, and therefore cannot be stayed by a supersedeas bond, a circuit court, or the judge thereof in vacation, has power, upon proper showing, to stay proceedings during the pendency of an appeal therefrom. *Reese v. Steele*, 73 Ark. 66, 83 S.W. 335 (1904) (decision under prior law).

Former similar statute referred to removal of county seat from one town to another, and not from one lot to another in the same town. *Graham v. Nix*, 102 Ark. 277, 144 S.W. 214 (1912) (decision under prior law).

Where, in an action to stay an election on removal of a county seat, a question of law was raised whether the election petition had been brought under the proper statutory method and a question of fact was raised whether the petition was signed by the required number of qualified voters of the county, the contestants were entitled to trial on the merits prior to the election. *Bruce v. Nicholas*, 226 Ark. 890, 294 S.W.2d 772 (1956) (decision under prior law).

Title.

A county court has jurisdiction to pass upon the sufficiency of the abstract of title. *Walsh v. Hampton*, 96 Ark. 427, 132 S.W. 214 (1910) (decision under prior law).

14-14-303. Petition for change.

(a) Whenever fifteen percent (15%) of the legal voters of any county in this state shall join in a petition to the county court of the county for the change or removal of the county seat, the county court shall order an election to be held at the voting places in the county directing that the proposition of the petitioners for the change or removal shall be submitted to the qualified electors.

(b) The number of signatures required upon a petition for change of a county seat shall be computed upon the total vote cast for the Office of Governor at the preceding general election in the county affected by the petition.

History. Acts 1977, No. 742, § 26;
A.S.A. 1947, § 17-3304.

CASE NOTES

ANALYSIS

Change of courthouse.
Elections.

Change of Courthouse.

When a county seat has been removed, until the courthouse has been erected, the court can lawfully sit in a building on

other property than that to be used as a court when the courthouse is erected. *Hudspeth v. State*, 55 Ark. 323, 18 S.W. 183 (1892) (decision under prior law).

Where voters elected to abolish two districts and establish county seat at one new location, but nothing was done to facilitate the new county seat at the location, courts had jurisdiction to sit in old districts until new courthouse was certified as ready for use. *Warren v. State*, 241 Ark. 264, 407 S.W.2d 724 (1966) (decision under prior law).

Elections.

An offer, by interested persons, to build a courthouse and jail and donate them to the county, in case the county seat is changed to the desired point, is not an offer to bribe electors and will not invalidate an election at which such a change is made. *Neal v. Shinn*, 49 Ark. 227, 4 S.W. 771 (1887) (decision under prior law).

The general election law applies to a

county seat election. *Walsh v. Hampton*, 96 Ark. 427, 132 S.W. 214 (1910) (decision under prior law).

In an election regarding the removal of a county seat, the canvassing board should not go behind the returns and purge the returns of illegal votes, as the board has no discretionary power. *Pitts v. Stuckert*, 111 Ark. 388, 163 S.W. 1173 (1914) (decision under prior law).

Where, in a given precinct, it was shown that fraud was promiscuously committed by the election officials that affected the result to an extent, the exact limits of which it was impossible to ascertain from the testimony and which fairly drew into question the integrity of the whole return, the same should have been thrown out entirely and omitted from the count, leaving each party the opportunity to prove, by other evidence, the number of legal ballots actually cast. *Sailor v. Rankin*, 125 Ark. 557, 189 S.W. 357 (1916) (decision under prior law).

14-14-304. Form of ballots.

The ballots of the voters shall have written or printed upon them the words "FOR CHANGE," or "AGAINST CHANGE," meaning for or against change from the existing county seat location, and the words "FOR" (one of the localities allowed by the act to be voted for, naming and describing the place to which the change or removal is proposed).

History. Acts 1875, No. 86, § 5, p. 201; C. & M. Dig., § 1874; Pope's Dig., § 2393; A.S.A. 1947, § 17-205.

14-14-305. Designation of new site.

(a) Where a majority of the qualified voters of the county have voted in favor of the change from the existing location and are in a majority agreement as to the location in cases where more than one (1) location is proposed, the county court shall proceed to carry into effect the will of the majority.

(b) Where a majority agreement is rendered in favor of a change but is not rendered on a specific location, where more than one (1) location is proposed, the court shall immediately order an election to decide which of the two (2) locations receiving the highest number of votes in the initial election on the issue shall be designated as the new site for the county seat.

History. Acts 1977, No. 742, § 28; A.S.A. 1947, § 17-3306.

CASE NOTES

ANALYSIS

Authority of county courts.
Proceedings and appeals.

Authority of County Courts.

The removal of a county seat is a matter of local concern over which the county court has exclusive original jurisdiction; the circuit court has no authority to determine the result of an election for removal in the first instance and before the county court has acted in the premises, and where it assumes to do so, a writ of prohibition will lie from the Supreme Court. *Russell v. Jacoway*, 33 Ark. 191 (1878) (decision under prior law).

As the power of a county court over the location of public buildings is a continuing one, the court, after ordering a courthouse to be built on a certain lot, may, at a subsequent term, order the courthouse to be built on another lot in the same town.

Graham v. Nix, 102 Ark. 277, 144 S.W. 214 (1912) (decision under prior law).

Proceedings and Appeals.

Where the contest is heard in the circuit court on appeal from an order of the county court and it is adjudged there that a majority of the votes were for removal, but not for either place proposed, the circuit court has jurisdiction to order an election to determine the place to which the removal shall be made. *Neal v. Shinn*, 49 Ark. 227, 4 S.W. 771 (1887); *Sailor v. Rankin*, 125 Ark. 557, 189 S.W. 357 (1916) (decisions under prior law).

Voters have a right to make themselves parties to designation proceedings and appeal from an order of the county court. *Rucks v. Renfrow*, 54 Ark. 409, 16 S.W. 6 (1891); *Butler v. Mills*, 61 Ark. 477, 33 S.W. 632 (1896) (decisions under prior law).

14-14-306. Deed to county required.

Before proceeding to carry into effect the will of a majority voting on the issue of changing a county seat, the county court shall require the vendor or donor of the new location to deliver a good and sufficient deed, conveying to the county the land or location so sold or donated in fee simple, without reservation or condition, and also an abstract of the title, papers, deeds, and conveyances, and assurances by or through which the title thereof is derived, who shall file the deed for record in the recorder's office of the county, to be recorded as other title deeds and papers. The place so deeded shall then be the permanent county seat, and the title shall be vested in the county.

History. Acts 1977, No. 742, § 27;
A.S.A. 1947, § 17-3305.

CASE NOTES

Deeds.

Where a person, knowing that a contest over the location of the county seat was pending, conveyed certain property to the county to be used for courthouse purposes and the county seat was finally located

elsewhere, the deed to the county was not executed under a mistake and would not be canceled. *Schuman v. George*, 110 Ark. 486, 161 S.W. 1039 (1913) (decision under prior law).

14-14-307. Temporary location of county seat for new county.

(a) The temporary location for the county seat of any new county shall be fixed by the act of the General Assembly authorizing the formation and organization of the new county.

(b) The temporary location shall be considered the permanent and established location unless changed as provided in this subchapter for the change of county seats.

History. Acts 1977, No. 742, § 25;
A.S.A. 1947, § 17-3303.

14-14-308. Emergency temporary location for political subdivisions.

(a)(1) Whenever, due to an emergency resulting from the effects of enemy attack, or the anticipated effects of a threatened enemy attack, it becomes imprudent, inexpedient, or impossible to conduct the affairs of local government at the regular or usual place thereof, the governing body of each political subdivision of this state may meet at any place within or without the territorial limits of the political subdivisions on the call of the presiding officer or any two (2) members of the governing body. The governing body shall proceed to establish and designate by ordinance, resolution, or other manner alternate or substitute sites or places as the emergency temporary location of government where all, or any part, of the public business may be transacted and conducted during the emergency situation.

(2) The sites or places may be within or without the territorial limits of the political subdivisions and may be within or without this state.

(b)(1) During the period when the public business is being conducted at an emergency temporary location, the governing body and other officers of a political subdivision of this state shall have and possess and shall exercise at the location all of the executive, legislative, and judicial powers and functions conferred upon the body and officers by or under the laws of this state.

(2) The powers and functions of the governing body and officers may be exercised without regard to or compliance with time-consuming procedures and formalities prescribed by law and pertaining thereto. All acts of the body and officers shall be as valid and binding as if performed within the territorial limits of their political subdivision.

(c) "Political subdivisions" shall mean all duly formed and constituted governing bodies created and established under authority of the Arkansas Constitution and laws of this state.

History. Acts 1977, No. 742, §§ 29-31;
A.S.A. 1947, §§ 17-3307 — 17-3309.

SUBCHAPTER 4 — QUORUM COURT DISTRICTS

SECTION.

14-14-401. Establishment — Townships continued.
14-14-402. Number of districts.
14-14-403. Apportionment of districts.
14-14-404. Federal decennial census data.

SECTION.

14-14-405. Filing and publishing of plan.
14-14-406. Contest of apportionment.
14-14-407. Certification of plan.

Effective Dates. Acts 1977, No. 742, § 118; Mar. 24, 1977. Emergency clause provided: "It is hereby found by the General Assembly that the passage of Amendment 55 to the Arkansas Constitution has caused major changes in the structure of county government and that, because of said changes, a need exists to modernize laws affecting county government. It is further found that the citizens of the sev-

eral counties of the State are in need of services provided by county governments and said services can best be provided under the provisions of this Act. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the public health, welfare and safety, shall be in effect from and after its passage and approval."

14-14-401. Establishment — Townships continued.

(a) Each county of the state shall divide its land area into convenient county quorum court districts in a manner and at times prescribed by the General Assembly.

(b) The county court of each county in this state shall have the authority to divide the county into convenient townships, subdivide those already established and alter township lines.

(c) It shall be the duty of the clerk of the county court to enter on the minutes of the court a description of each township established by the court, containing the name and boundaries of the township and the place appointed for holding elections; and shall also note in the minutes every alteration that is made in any township lines.

(d) The clerk of the county court shall within thirty (30) days after establishing any new township or altering any existing township line, provide the Secretary of State a certified copy of the record made.

(e) If any county clerk in this state has not furnished the Secretary of State with a description of the several townships in the county, it shall be the duty of the county court to direct the clerk of that court to provide the Secretary of State with the description.

(f) Whenever the county court of any county in this state orders the formation of one (1) or more new townships or changes the boundary lines of any of the townships in the county, which formation or change shall require additional township officers, the additional township officer or officers shall be filled in accordance with Arkansas Constitution, Article 7, § 50.

History. Acts 1977, No. 742, § 32; 1979, No. 413, § 4; A.S.A. 1947, § 17-3401; Acts 1997, No. 1090, § 1.

A.C.R.C. Notes. The 1997 amendment to this section contains grammatical or stylistic errors. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the language.

Publisher's Notes. Sections 1 and 4 of Amendment 55 to the Arkansas Constitution set forth specific powers assigned to the quorum court. One of these, as pro-

vided in Ark. Const. Amend. 55, § 4, is the power to fill vacancies in elective county offices. Arkansas Const. Amend. 55, § 7 provides that §§ 1 and 4 of the amendment shall be effective on January 1, 1977. Arkansas Const. Amend. 55 was adopted at the general election on November 5, 1974.

Amendments. The 1997 amendment rewrote (b); and added (c)-(f).

Cross References. Elective offices, Ark. Const. Amend. 29, § 1.

CASE NOTES

ANALYSIS

Appeals.

Power of county courts.

Appeals.

On appeal from the action of the circuit court in considering action of county court in alteration of townships (now quorum court districts), Supreme Court would not consider the preponderance of the evidence, but only the question of whether there was substantial evidence to support the judgment of the trial court. *Caldwell v. Board of Election Comm'rs*, 236 Ark. 719, 368 S.W.2d 85 (1963) (decision under prior law).

Power of County Courts.

It was unnecessary to determine whether board of election commissioners had power to file petition in county court for change of township (now quorum court

districts) boundaries, since county court would have had such power on its own initiative. *Garland County Bd. of Election Comm'rs v. Ennis*, 227 Ark. 880, 302 S.W.2d 76 (1957) (decision under prior law).

County courts have full power over the formation of townships (now quorum court districts) in their respective counties, including the power to abolish townships already formed. *Caldwell v. Board of Election Comm'rs*, 236 Ark. 719, 368 S.W.2d 85 (1963) (decision under prior law).

Cited: *Farnsworth v. White County*, 39 Ark. App. 98, 839 S.W.2d 229 (1992), *aff'd*, 312 Ark. 574, 851 S.W.2d 451 (1993); *Riley v. Baxter County Election Comm'n*, 311 Ark. 273, 843 S.W.2d 831 (1992); *Gravett v. Villines*, 314 Ark. 320, 862 S.W.2d 260 (1993).

14-14-402. Number of districts.

The number of convenient quorum court districts to be established in each county shall be determined according to the following population categories:

Quorum Court Districts

	<u>Population</u>
9	0 to 19,999
11	20,000 to 49,999
13	50,000 to 199,999
15	200,000 and above

History. Acts 1977, No. 742, § 33; 1979, No. 413, § 4; A.S.A. 1947, § 17-3402.

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law,
Public Law, 1 UALR L.J. 230.

CASE NOTES

Cited: *Riley v. Baxter County Election Comm'n*, 311 Ark. 273, 843 S.W.2d 831 (1992).

14-14-403. Apportionment of districts.

(a) The county board of election commissioners in each county shall be responsible for the apportionment of the county into quorum court districts. Until otherwise changed in the method set forth in this subchapter, the districts of each county shall consist of the territory of the township established by the county board of election commissioners on or before November 3, 1975, pursuant to the provisions of Acts 1975, No. 128 [repealed]. Thereafter, districts shall be apportioned on or before the first Monday after January 1, 1982, and each ten (10) years thereafter.

(b) All apportionments shall be based on the population of the county as of the last federal decennial census, and the number of districts apportioned shall be equal to the number to which the county is entitled by law.

(c) The provisions of this subchapter shall not be construed to affect the composition of the county committees of the political parties, and the county committee of each political party shall designate the geographic area within the county from which county committeemen shall be selected.

History. Acts 1977, No. 742, § 34; 1979, No. 413, § 4; A.S.A. 1947, § 17-3403.

Publisher's Notes. Acts 1975, No. 128, was repealed by Acts 1977, No. 742, § 117.

CASE NOTES

ANALYSIS

Constitutionality.
Purpose.
Burden of proof.

Constitutionality.

Unit voting systems which contain varying populations are unconstitutional per se because they deny residents equal representation ensured by U.S. Const. Amend. 14. *Riley v. Baxter County Election Comm'n*, 311 Ark. 273, 843 S.W.2d 831 (1992).

Purpose.

The overriding objective of apportionment must be substantial equality of population among the various districts. *Riley v. Baxter County Election Comm'n*, 311 Ark. 273, 843 S.W.2d 831 (1992).

The primary consideration of reapportionment is the numerical equality of the districts, or fair and effective representation for all citizens. *Riley v. Baxter County Election Comm'n*, 311 Ark. 273, 843 S.W.2d 831 (1992).

Burden of Proof.

Population variation among districts greater than 10% is a prima facie violation of the equal protection clause, and after such a prima facie case is established, the burden of proof shifts to the defendant to justify the variances. *Riley v. Baxter County Election Comm'n*, 311 Ark. 273, 843 S.W.2d 831 (1992).

Trial court did not err in finding that county election commission overcame prima facie case of discrimination, where

10.149% variance in quorum court districts was only slightly over the acceptable 10% variation, and the systematic approach taken by the commission revealed a rational policy of redistricting which justified the end result that two of 11 districts were over the 10% acceptable variance by four and three voters, respectively. *Riley v. Baxter County Election Comm'n*, 311 Ark. 273, 843 S.W.2d 831 (1992).

14-14-404. Federal decennial census data.

The State Board of Apportionment shall provide each of the respective county boards of election commissioners with the appropriate and necessary federal decennial census information, not less than ninety (90) days prior to the date established for apportionment of county quorum court districts.

History. Acts 1977, No. 742, § 35; 1979, No. 413, § 4; A.S.A. 1947, § 17-3404.

CASE NOTES

Cited: *Riley v. Baxter County Election Comm'n*, 311 Ark. 273, 843 S.W.2d 831 (1992).

14-14-405. Filing and publishing of plan.

(a) Not later than the date set for the apportionment of county quorum court districts, the county board of election commissioners shall file its report with the clerk of the county court, setting forth the district boundaries and the number of inhabitants within them.

(b) Within fifteen (15) days of the filing of an apportionment plan, the clerk of the county court shall cause to be published in a newspaper of general circulation in the county the district boundaries apportioned and the number of inhabitants within them.

History. Acts 1977, No. 742, § 36; 1979, No. 413, § 4; A.S.A. 1947, § 17-3405.

CASE NOTES

Cited: *Goldsby v. Brick*, 281 Ark. 58, 661 S.W.2d 368 (1983); *Riley v. Baxter County Election Comm'n*, 311 Ark. 273, 843 S.W.2d 831 (1992).

14-14-406. Contest of apportionment.

Original jurisdiction of any suit to contest the apportionment made for county quorum court districts by a county board of election commissioners is vested in the circuit court of the affected county. Any such contest shall be filed with the circuit court within thirty (30) days following the date publication appears in a newspaper of general circulation.

History. Acts 1977, No. 742, § 37; 1979, No. 413, § 4; A.S.A. 1947, § 17-3406.

CASE NOTES**Suits to Contest.**

To seek to set aside an apportionment plan filed and published in accordance with statutorily approved procedures is a

contest in the sense contemplated by this section, which imposes a 30-day time limit on such suits. *Goldsby v. Brick*, 281 Ark. 58, 661 S.W.2d 368 (1983).

14-14-407. Certification of plan.

The clerk of the county court, within seven (7) calendar days following the expiration of the time period provided for the filing of contest of an apportionment plan, shall transmit to the Secretary of State a certified copy of the record made of an apportionment plan.

History. Acts 1977, No. 742, § 38; A.S.A. 1947, § 17-3407.

SUBCHAPTER 5 — ORGANIZATION GENERALLY**SECTION.**

14-14-501. Body politic and corporate.

14-14-502. Distribution of powers.

Effective Dates. Acts 1977, No. 742, § 118: Mar. 24, 1977. Emergency clause provided: "It is hereby found by the General Assembly that the passage of Amendment 55 to the Arkansas Constitution has caused major changes in the structure of county government and that, because of said changes, a need exists to modernize laws affecting county government. It is further found that the citizens of the sev-

eral counties of the State are in need of services provided by county governments and said services can best be provided under the provisions of this Act. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the public health, welfare and safety, shall be in effect from and after its passage and approval."

RESEARCH REFERENCES

C.J.S. 20 C.J.S., Counties, § 42 et seq.

14-14-501. Body politic and corporate.

A county government is a body politic and corporate created by the General Assembly and subject to its exercise of power. However, county governments shall possess legislative powers not denied by the Arkansas Constitution or by law. As a corporate body, county governments shall have corporate and governmental powers, a corporate name, and perpetual succession subject to limitations imposed by the General Assembly.

History. Acts 1977, No. 742, § 39;
A.S.A. 1947, § 17-3501.

14-14-502. Distribution of powers.

(a) **DIVISION.** The powers of the county governments of the State of Arkansas shall be divided into three (3) distinct departments, each of them to be confined to a separate body, to wit: Those which are legislative to one, those which are executive to a second, and those which are judicial to a third.

(1) **LEGISLATIVE.** All legislative powers of the county governments are vested in the quorum court. The people reserve to themselves the power to propose county legislative measures and to enact or reject them at the polls independent of the quorum court. The people also reserve to themselves the power, at their option, to approve or reject at the polls any entire ordinance enacted by a quorum court.

(2)(A) **EXECUTIVE.** The executive divisions of a county government shall consist of:

(i) The county judge, who shall perform the duties of the chief executive officer of the county as provided in Arkansas Constitution, Amendment 55, Section 3, and as implemented in this chapter and who shall preside over the quorum court without a vote but with the power of veto;

(ii) One (1) sheriff, who shall be ex officio collector of taxes, unless otherwise provided by law;

(iii) One (1) assessor;

(iv) One (1) coroner;

(v) One (1) treasurer, who shall be ex officio treasurer of the common school fund of the county;

(vi) One (1) surveyor; and

(vii) One (1) clerk of the circuit court, who shall be ex officio clerk of the county and probate courts and recorder.

(B) There may be elected a county clerk in like manner as a circuit clerk, and in such cases, the county clerk may be ex officio clerk of the probate court of the county until otherwise provided by the General Assembly.

(3) **JUDICIAL.** The judicial divisions of a county government are vested in the county court, except with respect to those powers formerly vested in the county court which, by the provisions of Arkansas Constitution,

Amendment 55, are to be performed by the county judge, and in the respective courts of this state as provided by law.

(b) **LIMITATIONS.** No person or collection of persons being one (1) of these departments, legislative, executive, or judicial, shall exercise any power belonging to either of the others, except in the instances expressly directed or permitted.

History. Acts 1977, No. 742, § 40; 1979, No. 413, § 5; A.S.A. 1947, § 17-3502.

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

CASE NOTES

In General.

The clear division and separation of powers among the branches of county government provided by subsections (a) and (b) of this section makes it apparent that the government is no longer controlled and operated by only a single entity.

Pulaski County v. Jacuzzi Bros., 317 Ark. 10, 875 S.W.2d 496 (1994).

Cited: *Walker v. County of Washington*, 263 Ark. 317, 564 S.W.2d 513 (1978); *Davis v. Fulton County*, 884 F Supp. 1245 (E.D. Ark. 1995).

SUBCHAPTER 6 — ALTERNATIVE ORGANIZATIONS

SECTION.

- 14-14-601. Legislative determination — Purpose.
- 14-14-602. Definitions.
- 14-14-603. Offices included.
- 14-14-604. Offices excluded.
- 14-14-605. Authority to adopt alternative provisions — Options.
- 14-14-606. Analysis of each office required.
- 14-14-607. Initiation and conduct of analysis.

SECTION.

- 14-14-608. Limitations on adoption of alternatives.
- 14-14-609. Referendum on proposed plan.
- 14-14-610. Election results.
- 14-14-611. Appointment of interim officers.
- 14-14-612. Abandonment of alternative plan.
- 14-14-613. Multicounty consolidations of offices and departments.
- 14-14-614. Severability of ballot titles.

Effective Dates. Acts 1977, No. 742, § 118; Mar. 24, 1977. Emergency clause provided: "It is hereby found by the General Assembly that the passage of Amendment 55 to the Arkansas Constitution has caused major changes in the structure of county government and that, because of said changes, a need exists to modernize laws affecting county government. It is further found that the citizens of the sev-

eral counties of the State are in need of services provided by county governments and said services can best be provided under the provisions of this Act. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the public health, welfare and safety, shall be in effect from and after its passage and approval."

RESEARCH REFERENCES

C.J.S. 20 C.J.S., Counties, § 42 et seq.
UALR L.J. Survey of Arkansas Law,
 Public Law, 1 UALR L.J. 230.

CASE NOTES

Authority Generally.

No county is authorized to pass an ordinance reorganizing its government in a

manner contrary to the general law of the state. *Clark County v. Miller*, 291 Ark. 203, 723 S.W.2d 820 (1987).

14-14-601. Legislative determination — Purpose.

(a) It is determined by the General Assembly that:

(1) The present structure of county government does not meet the needs of every county in the state;

(2) County government can be made more responsive to the wishes of the people through selected structural changes and consolidation; and

(3) Greater economy, efficiency, and effectiveness in providing governmental services can be achieved through modernization of county government.

(b) It is the purpose of this subchapter to:

(1) Establish the basic procedures for the adoption and implementation of alternative county government organization pursuant to Arkansas Constitution, Amendment 55, § 2, Part (b), which provides: "The quorum court may create, consolidate, separate, revise, or abandon any elective county office or offices except during the term thereof; provided, however, that a majority of those voting on the question at a general election have approved said action;" and

(2) Provide the citizens of each county the opportunity to select the form of county government organization which best serves their needs and desires.

History. Acts 1977, No. 742, §§ 54, 55;
 A.S.A. 1947, §§ 17-3701, 17-3702.

CASE NOTES

Cited: *Clark County v. Miller*, 291 Ark. 203, 723 S.W.2d 820 (1987).

14-14-602. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Create" means to bring into being, to cause to exist, to produce;
- (2) "Consolidate" means to unite offices into one (1) office;
- (3) "Separate" means to disunite, divide, disconnect, or sever;
- (4) "Revise" means to review, reexamine for correction or for the purpose of amending, correcting, rearranging, or otherwise improving; and

(5) "Abandon" means to desert, surrender, forsake, or to give up absolutely.

History. Acts 1977, No. 742, § 58;
A.S.A. 1947, § 17-3705.

14-14-603. Offices included.

(a) Within the purposes of this chapter, the term "elective county office" shall mean any office created under the provisions of Arkansas Constitution, Article 7, §§ 19 and 46, as amended by Amendment 24, § 3.

(b) The elective county offices established by these constitutional provisions are:

(1) One (1) sheriff, who shall be ex officio collector of taxes, unless otherwise provided by law;

(2) One (1) collector of taxes, where established by law;

(3) One (1) assessor;

(4) One (1) coroner;

(5) One (1) treasurer, who shall be ex officio treasurer of the common school fund;

(6) One (1) surveyor;

(7) One (1) clerk of the circuit court, who shall be ex officio clerk of the county and probate courts and recorder, unless otherwise provided by law; and

(8) One (1) county clerk, where established by law.

History. Acts 1977, No. 742, § 56;
A.S.A. 1947, § 17-3703.

14-14-604. Offices excluded.

Offices expressly excluded from the provisions of this subchapter are:

(1) The judge of the county court created pursuant to Arkansas Constitution, Article 7, § 28, such office being an "elective county office" but not deemed separable from the county court which serves as a principal element of county government and constitutional organization;

(2) Justices of the peace who are deemed district offices; and

(3) Constables who are deemed township offices and who are not within the provisions of Arkansas Constitution, Amendment 55, § 2, Part (b).

History. Acts 1977, No. 742, § 57;
1979, No. 413, § 11; A.S.A. 1947, § 17-3704.

CASE NOTES**Limitation on Powers.**

County ordinance failed because of the power it granted to the county judge to prepare payroll warrants. This section provides expressly that the offices of county judge, justice of the peace, and

constable are excluded from the provisions of this subchapter, and those offices may not be revised pursuant to Ark. Const. Amend. 55. *Clark County v. Miller*, 291 Ark. 203, 723 S.W.2d 820 (1987).

14-14-605. Authority to adopt alternative provisions — Options.

(a) Each county quorum court may adopt, by ordinance, any one (1) or more of the alternative county government organizational provisions established in this subchapter if the electors have approved the adoption of the proposed provisions by majority vote at a general election.

(b) Alternative organizational proposals may include any one (1) or all of the following options. The principal officer of the office to be affected by the alternate organizational proposal shall be:

- (1) Elected;
- (2) Appointed in a manner prescribed by ordinance;
- (3) Appointed by a county government board in a manner prescribed by ordinance;
- (4) Selected as provided by ordinance; or
- (5) Not included in the proposed alternative county organization as a separate office.

History. Acts 1977, No. 742, § 59;
A.S.A. 1947, § 17-3706.

14-14-606. Analysis of each office required.

(a) All proposals for alternative county government organization adopted by a county quorum court through ordinance for referral to the electors, or an initiative petition referring an alternative organization proposal to the electors, shall be based on a comprehensive analysis of each office or department included in the ordinance or proposal.

(b) The analysis of each office or department shall consist of the following requirements:

(1) A comprehensive analysis of the existing office or department organization included in the proposal and the procedures established for providing governmental services;

(2) A comprehensive comparative analysis of the proposed alternative organization with regard to improved efficiency, effectiveness, responsiveness, and accountability to the people;

(3) The preparation of a proposed plan of organization embodying the selected characteristics to be referred to the electors. The plan shall:

(A) Establish the procedures for the election or appointment of any new officers. However, any appointive officer shall be deemed a part of the executive branch and, as such, shall be appointed by, and be responsible to, the county judge;

(B) Provide for the scheduling of any necessary transfer of powers, records, documents, properties, assets, funds, liabilities, and bonding which result from the changes in a proposed county organization;

(C) Provide for the continuity, where necessary, of existing officers and offices, the abolition of offices or their change from elective to appointive status, and the making of interim and temporary appointments; and

(D) Provide that the plan may be prepared in narrative form but shall be finally embodied in a single or series of ordinances styled in a manner provided by law.

History. Acts 1977, No. 742, § 60; 1979, No. 413, § 12; A.S.A. 1947, § 17-3707.

14-14-607. Initiation and conduct of analysis.

(a) INITIATION. Any justice of the peace of each county may propose the initiation of an analysis for alternative county organization through the introduction and passage of an ordinance, or the initiation may be accomplished by an initiative petition of the electors.

(b) CONDUCT OF ANALYSIS. An ordinance adopted for conduct of an analysis of alternative county organizations shall provide for:

(1) The final date of completion of the analysis;

(2) The employment of any staff or other financial support where deemed necessary;

(3) The conduct of the analysis; and

(4) The selection of any one, or any combinations, of the following methods of conduct:

(A) Directly by the county quorum court through the establishment of an office or department;

(B) By interlocal agreement;

(C) By purchasing the analysis services from a private or public vendor; or

(D) By establishing a county board in a manner prescribed by the ordinance.

History. Acts 1977, No. 742, § 61; A.S.A. 1947, § 17-3708.

14-14-608. Limitations on adoption of alternatives.

(a) SERVICES TO BE MAINTAINED. A county government serving as a political subdivision of the state for the more convenient administration of justice is compelled by law to provide certain services relating to judicial administration, law enforcement, and other matters. No county ordinance adopted by the electors for the establishment of alternative county organizations shall serve to repeal or diminish any general law of the state directing or requiring a county government or any officer or employee of a county government to carry out any function or provide

any service. However, nothing in this section shall be construed to limit or prevent counties from adopting alternative county organizations nor the reassignment of statutorily delegated functions or services where such alternative organization or reassignment shall not alter the obligation of the county to continue providing the services or functions which are or may be established by state law.

(b) **TRANSFER OF DUTIES.** To encourage that a minimum level of consistency shall be maintained in county governments throughout the state, the following organizational limitations may apply where any one (1) or all elective county offices are abolished and consolidated. However, nothing in this section shall be construed to limit the consolidation of any nonelected county office or department by two (2) or more adjoining counties through interlocal agreement:

(1) All duties prescribed by law for the clerk of the circuit court may be assigned to a county department of records and court services;

(2) All duties prescribed by law for a county clerk exclusive of county financial management duties may be assigned to a county department of records and court services;

(3) All duties prescribed by law for a county clerk relating to county financial management may be assigned to a county department of financial management;

(4) All duties prescribed by law for the sheriff serving as an officer of the courts and law enforcement may be assigned to a county department of public safety;

(5) All duties prescribed by law for a sheriff serving as the collector of taxes may be assigned to a county department of financial management;

(6) All duties prescribed by law for a collector of taxes may be assigned to a county department of financial management;

(7) All duties prescribed by law for an assessor may be assigned to a county department of records and court services;

(8) All duties prescribed by law for a surveyor may be assigned to a county department of records and court services;

(9) All duties prescribed by law for a coroner may be assigned to a county department of records and court services;

(10) All duties prescribed by law for a treasurer may be assigned to a county department of financial management. However, any plan for alternative county organization adopted by the electors which includes the abolishment of the treasurer as an elective office shall provide in that plan for the establishment of financial controls. The plan of financial controls shall not vest sole financial administration in a single elected official or in a department which is administratively controlled by the elected official.

History. Acts 1977, No. 742, § 62; 1979, No. 413, § 13; A.S.A. 1947, § 17-3709.

CASE NOTES**ANALYSIS**

Reassignment of duties.
Sole financial administration.

Reassignment of Duties.

While the general law of the state requires the office of sheriff to be maintained and includes as a duty of the office of sheriff the running of the county jail, this section allows a county to reassign statutorily imposed duties so long as the reassignment does not "alter the obligation of the county to continue providing the services." *Gravett v. Villines*, 314 Ark. 320, 862 S.W.2d 260 (1993).

Sole Financial Administration.

Regarding the provisions of this section prohibiting the placement of "sole finan-

cial administration" in a single official or department, the court rejected the contention that "sole financial administration" meant all the subparts of administration including account, budgeting, and auditing, and not just the collecting and accounting revenues. *Clark County v. Miller*, 291 Ark. 203, 723 S.W.2d 820 (1987).

County ordinance which vested sole financial administration in a newly created office of tax and revenue was in violation of this section. *Clark County v. Miller*, 291 Ark. 203, 723 S.W.2d 820 (1987).

14-14-609. Referendum on proposed plan.

(a) All questions on alternative county organization as proposed by ordinance of the county quorum court, or as proposed by initiated petitions filed by electors of the county pursuant to Arkansas Constitution, Amendment 7, shall be submitted to the electors of a county only at the general election following the adoption of the ordinance or filing of the petitions.

(b)(1) Any ordinance or initiative petition submitting an alternative organization proposal to the voters shall be published in a newspaper of general circulation within the county no later than the first day of filing for the preferential primary immediately preceding the general election at which the alternative county government proposal shall be decided.

(2) If approved by a majority of those voting on the question, the proposed plan for alternative county organization shall become effective on January 1 following the general election at which the plan was approved by the electors, or two (2) years following the general election at which the plan was approved by the electors.

History. Acts 1977, No. 742, § 63; 1979, No. 413, § 14; A.S.A. 1947, § 17-3710.

14-14-610. Election results.

(a) An affirmative majority vote by the electors voting on the adoption of an alternative county organization plan shall be deemed the will of the people.

(b) The election of any candidate during the same general election for any office consolidated, abandoned, or established as an appointive

office by an adopted plan of alternative county organization shall be considered null and void.

History. Acts 1977, No. 742, § 64;
A.S.A. 1947, § 17-3711.

14-14-611. Appointment of interim officers.

Where a proposed plan approved by the electors for alternative county organization provides for the creation of any elective office by consolidation of two (2) or more offices, the proposed plan shall establish procedures for the appointment of an interim officer, who shall serve in the office so created from the effective date of the plan and until the next general election, or until a successor is elected and qualified. The appointee shall meet all requirements prescribed by law for appointment to an elective office.

History. Acts 1977, No. 742, § 65;
A.S.A. 1947, § 17-3712.

14-14-612. Abandonment of alternative plan.

(a) A county quorum court may abandon any alternative county organization plan, or any part or section thereof, adopted by the electors pursuant to this subchapter, by referral and adoption of a revised organizational plan at a general election. However, no revised alternative county organization plan shall be considered by the electors until four (4) years have elapsed after the date of the referendum at which the original plan was adopted.

(b) Nothing in this section, however, shall be construed as a limitation on a quorum court to submit a proposal to the electors at a general election for multicounty consolidation of an elective office.

History. Acts 1977, No. 742, § 66;
A.S.A. 1947, § 17-3713.

14-14-613. Multicounty consolidations of offices and departments.

Any two (2) or more adjoining counties may consolidate functionally similar county offices or departments, either elective or appointive, pursuant to the provisions of Arkansas Constitution, Amendment 55, § 1, Part (c) and § 2, Part (b).

(1) CONSOLIDATION OF ELECTIVE OFFICES. (A) INITIATION. Proposals for the consolidation of elective county offices may be initiated by the county quorum courts of each affected county by entering into an interlocal agreement and adoption of an ordinance for referral to the electors of each respective county, or by the filing of an initiative petition signed by not less than fifteen percent (15%) of the qualified voters as provided by law.

(B) **PLAN OF PROPOSED ALTERNATIVE ORGANIZATION REQUIRED.** All proposals for multicounty consolidation of elective offices referred to the electors shall be prepared in the manner prescribed by law for alternative county government organization proposals affecting a single county. Where applicable and possible, multicounty elective office consolidation proposals should be planned, combined, and referred to the electors jointly with proposals referring alternative single county organizations.

(C) **MULTICOUNTY CONSOLIDATION AGREEMENTS REQUIRED.** All interlocal agreements for consolidation of any elective office shall specify the offices to be consolidated, the duties and responsibilities of the consolidated offices, procedures for the selection and reassignment of personnel, procedures for the transfer of powers, records, documents, properties, assets, funds, and liabilities, and for the possible termination of the agreement. The agreement shall also provide for apportionment of the cost of the consolidated office, based on the equalized taxable valuation or the population, or a combination thereof, of the counties involved. The agreement may contain other provisions pertaining to the consolidated office that the participating counties deem necessary or advisable. Each interlocal agreement shall be adopted through ordinance by the quorum court of each county affected prior to submission to the electors.

(D) **REFERENDUM ON ELECTIVE OFFICE CONSOLIDATION.** The question of multicounty consolidation of elective county offices shall be submitted to the electors in the affected counties at the next general election following the adoption of the agreements by the quorum courts. If approved by a majority of those voting on the question in each county, the proposed consolidation shall become effective on January 1 following the general election at which such consolidation was approved by the electors.

(E) **APPOINTMENT OF INTERIM OFFICER.** All proposed multicounty consolidation agreements for a county elective office referred to the electors shall establish procedures for the appointment of an interim officer who shall serve in the consolidated office from the effective date of such agreement until the next general election or until his successor is elected and qualified. Such an appointee to an elective office shall meet all requirements prescribed by law for appointment to an office. The appointee to a multicounty elective office shall be deemed to be a district officer and shall be appointed by the Governor.

(F) **PRECEDENCE OF ELECTION.** An affirmative majority vote by the electors voting on the issue of multicounty consolidation of elective offices in each respective county shall be deemed the will of the people. The election of a candidate in each respective county for the offices affected by such adopted consolidation proposals shall be considered null and void.

(G) **ELECTIONS FOR MULTICOUNTY CONSOLIDATED OFFICES.** Election for multicounty consolidated offices shall be conducted at the next general election following the establishment of the consolidated

office. Elections of persons for consolidated county offices shall be held in the same manner as prescribed for the election of district officers. A candidate for a consolidated county office shall possess the same qualifications for election as required of a candidate for the same office in a single county. The candidate for a consolidated county office receiving a majority of votes cast for the office in the affected counties, taken together, shall be elected. If no candidate receives a majority of votes cast for the office, a runoff election between the two (2) candidates receiving the highest number of votes cast shall be held in the same manner as a runoff election for district officers.

(H) ABANDONMENT OF A MULTICOUNTY CONSOLIDATED ELECTIVE OFFICE PLAN. A quorum court may abandon any multicounty consolidated elective office plan, or any part or section thereof, adopted by the electors in their respective county by referring the revised plan to the electors at a general election. However, no revised plan for multicounty elective office consolidation shall be considered by the electors until four (4) years have elapsed after the date of the referendum at which the original plan for consolidation was adopted.

(2) CONSOLIDATION OF NONELECTIVE COUNTY OFFICES OR DEPARTMENTS. (A) AUTHORITY TO ADOPT CONSOLIDATION PLANS. Proposals for multicounty consolidation of nonelective county offices or departments may be introduced and adopted by the quorum court of each respective county by entering into an interlocal agreement by ordinance in each affected county. The consolidation of nonelective county offices or departments need not be referred to the electors for approval. However, any such ordinance shall be subject to the provisions of initiative and referendum in each respective county entering into such agreements.

(B) MULTICOUNTY CONSOLIDATION AGREEMENTS REQUIRED. All interlocal agreements for consolidation of nonelective county offices shall conform to the requirements of interlocal agreements prescribed by law.

History. Acts 1977, No. 742, § 67;
A.S.A. 1947, § 17-3714.

14-14-614. Severability of ballot titles.

(a)(1) **BALLOT TITLE.** Upon receipt of an alternative county organization proposal for either a single county or multicounty which is to be referred to the electors, it shall be the duty of the members of the county board of election commissioners to take due cognizance and to certify the results of the vote cast thereon.

(2) Where the proposed measure is referred through more than one (1) or a series of ordinances, the board shall cause the ballot title of each separate ordinance to be placed on the ballot to be used in the election. The ballot shall state plainly and separately the title of each ordinance referred to the electors.

(b) **SEVERABILITY.** If a single ordinance relating to a proposal for alternative county organization is rejected by the electors, the rejection

shall not affect any other ordinance so adopted by the electors; or if any provision of an ordinance adopted by the electors for alternative county organization or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provisions or application. The provisions of any single ordinance and the validity of each voted upon by separate ballot titles are declared to be severable.

History. Acts 1977, No. 742, § 68;
A.S.A. 1947, § 17-3715.

SUBCHAPTER 7 — SERVICE ORGANIZATIONS

SECTION.

- 14-14-701. Legislative determination — Purpose.
- 14-14-702. Authority to establish — Restrictions.
- 14-14-703. Office organization of county government.
- 14-14-704. Establishment of county departments.
- 14-14-705. County advisory or administrative boards.
- 14-14-706. Register of board appointment.
- 14-14-707. Conduct of affairs of county boards.

SECTION.

- 14-14-708. Subordinate service districts generally.
- 14-14-709. Establishment of subordinate service districts.
- 14-14-710. Modification or dissolution of subordinate service districts.
- 14-14-711. Administration of subordinate service districts.
- 14-14-712. Reorganization of existing county boards and commissions.

Cross References. City-county tourist meeting and entertainment facilities, § 14-171-201 et seq.

County museums, § 13-5-501 et seq.

Fire protection districts outside cities and towns, § 14-284-201 et seq.

Preambles. Acts 1981, No. 874 contained a preamble which read: "Whereas, Section 106, of Chapter 6 of Act 742 of 1977 authorized the counties of this State to establish county subordinate service districts, providing for the purposes of creating such districts as well as financing, establishment and administrative procedures; and

"Whereas, Act 919 of 1979 repealed Section 106 of Chapter 6 of Act 742 of 1977 but did provide for the establishment of county subordinate service districts created for particular purposes but did not provide for financing, establishment or administrative procedures; and

"Whereas, there presently exists a state

of confusion as to the legality of future subordinate service districts; and

"Whereas, this Act is necessary to clarify the present state of confusion;

"Now, therefore...."

Effective Dates. Acts 1977, No. 742, § 118: Mar. 24, 1977. Emergency clause provided: "It is hereby found by the General Assembly that the passage of Amendment 55 to the Arkansas Constitution has caused major changes in the structure of county government and that, because of said changes, a need exists to modernize laws affecting county government. It is further found that the citizens of the several counties of the State are in need of services provided by county governments and said services can best be provided under the provisions of this Act. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the public health, welfare and safety, shall be in effect from and after its passage and approval."

Acts 1977 (Ex. Sess.), No. 13, § 13: Aug. 15, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to the well being of the residents of the various counties that the county hospitals in the respective counties be under the management, control and operation of a separate Board of Governors selected and functioning in substantially the same manner as was provided for in Act 481 of 1949 and acts amendatory and supplemental thereto; that this Act is designed to substantially reenact the laws relating to County Hospital Boards of Governors which were repealed by Act 742 and to amend Section 107 of Act 742 to exempt

County Hospital Boards of Governors from the reorganization provided for therein, and to thereby insure the continued effective and efficient operation of the various county hospitals under the supervision and direction of the respective County Boards of Governors in substantially the same manner as was provided for in the laws repealed by Act 742 and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

14-14-701. Legislative determination — Purpose.

(a) It is determined by the General Assembly that:

(1) The present service organization of county government does not meet the needs of every county in this state; and

(2) County governments can be made more responsive to the service needs of the people through the reorganization of county government into departments, boards, and subordinate service districts which are consistent in their organization and assignment of duties, responsibilities, and authorities.

(b) It is therefore the purpose of this subchapter to:

(1) Establish the basic procedures for the establishment of service organizations in county government; and

(2) Establish the authorities and limitations of these service organizations.

History. Acts 1977, No. 742, §§ 98, 99; A.S.A. 1947, §§ 17-4101, 17-4102.

CASE NOTES

Cited: *Eaton v. McCuen*, 273 Ark. 154, 617 S.W.2d 341 (1981); *Freeman v. Curry*, 299 Ark. 263, 772 S.W.2d 586 (1989);

Gravett v. Villines, 314 Ark. 320, 862 S.W.2d 260 (1993).

14-14-702. Authority to establish — Restrictions.

The county quorum court of each county may prescribe, by ordinance, the department, board structure, and organization of their respective county governments and may prescribe the functions of all offices, departments, and boards. However, no ordinance shall be enacted by a quorum court which:

(1) Divests the county court of any of its original jurisdictions granted by the Arkansas Constitution. However, where any county ordinance establishing a department or board and the assignment of functions thereof interferes with the jurisdictions of the county court, it shall be implied that the functions and acts may be performed on order of the county court or proper order of superior courts on appeal;

(2) Alters the organization of elected county officials established by the Arkansas Constitution, except through the provisions of Arkansas Constitution, Amendment 55, § 2, Part (b). However, any function or duty assigned by statute may be reassigned by ordinance; or

(3) Limits any provision of state law directing or requiring a county government or any officer or employee of a county government to carry out any function or provide any service. However, nothing in this section shall be construed to prevent the reassignment of functions or services assigned by statute where Arkansas reassignment does not alter the obligation of the county to continue providing such function or service.

History. Acts 1977, No. 742, § 100;
A.S.A. 1947, § 17-4103.

CASE NOTES**Government Reorganization.**

Notwithstanding the power of quorum courts under Ark. Const. Amend. 55, § 2(b) and subdivision (2) of this section, no county is authorized to pass an ordinance reorganizing its government in a

manner contrary to the general law of the state. *Gravett v. Villines*, 314 Ark. 320, 862 S.W.2d 260 (1993).

Cited: *Roberts v. Watts*, 263 Ark. 822, 568 S.W.2d 1 (1978).

14-14-703. Office organization of county government.

(a) Unless otherwise provided or permitted by the Arkansas Constitution, county governments shall maintain the following organization of elected county offices:

(1) **OFFICE OF THE COUNTY JUDGE.** The judge of the county court serves as the principal executive officer of the county and may establish divisions of his office to carry out any jurisdiction of the county court or duties assigned by county ordinance. No such delegation of administrative functions among departments of the office shall be construed as limiting or delegating any jurisdiction of the county court. Further, the county court may appoint advisory committees to assist in the formulation of policy for any department of the office. However, confirmation

by the county quorum court of advisory committees so appointed or the oath of office is not required;

(2) OTHER EXECUTIVE OFFICES OF THE COUNTY. As established by the Arkansas Constitution, the organization of county offices shall include:

- (A) The office of treasurer;
- (B) The office of county clerk, as may be provided by law;
- (C) The office of assessor;
- (D) The office of clerk of the circuit court;
- (E) The office of sheriff;
- (F) The office of collector of taxes, as may be provided by law;
- (G) The office of surveyor; and
- (H) The office of coroner.

(b) Any executive officer of the county may establish divisions of the office to conduct any function or duty assigned by the Arkansas Constitution or by law.

History. Acts 1977, No. 742, § 101;
A.S.A. 1947, § 17-4104.

CASE NOTES

Cited: Gravett v. Villines, 314 Ark. 320,
862 S.W.2d 260 (1993).

14-14-704. Establishment of county departments.

The county quorum court of each county, by ordinance, may establish any number of departments for the conduct of county affairs and may prescribe the functions and duties of each department. This authority of a quorum court to establish county departments shall be conclusive and shall supersede any department organizations established by any elected county officer:

(1) DIRECTION OF DEPARTMENTS. All departments established by ordinance of the quorum court shall be under the direction and supervision of the county judge except departments assigned to other elected officers of the county. Departments established and assigned to an elected officer other than the county judge shall be under the direction and supervision of the respective county officer;

(2) JOINT DEPARTMENTS. Two (2) or more county governments may provide for the establishment of joint departments for the conduct of county affairs. Joint departments so created shall be established by interlocal agreements. The direction and supervision of joint departments shall be under the combined authorities of the county judge of each respective county in a manner to be prescribed by ordinance;

(3) EMPLOYMENT OF DEPARTMENT ADMINISTRATOR. An ordinance establishing a department of county government may provide for the employment of a department administrator; such ordinance may prescribe minimum qualifications for the person so employed as administrator. However, the county judge alone shall employ all county personnel, except employees of other elected county officers. Where a department

is established by the quorum court and the responsibility for direction and supervision of the department is assigned to an elected county officer other than the county judge, the elected county officer so designated shall employ all personnel authorized to be employed by the ordinance;

(4) **MANAGEMENT REPORTS.** A quorum court may require, by ordinance, reports for any purpose from any elective county office, department, board, or subordinate service district, or any administrator or employee of them.

History. Acts 1977, No. 742, § 102;
A.S.A. 1947, § 17-4105.

14-14-705. County advisory or administrative boards.

A county quorum court, by ordinance, may establish county advisory or administrative boards for the conduct of county affairs.

(1) **ADVISORY BOARDS.** (A) An advisory board may be established to assist a county office, department, or subordinate service district. The advisory board may furnish advice, gather information, make recommendations, and perform other activities as may be prescribed by ordinance. A county advisory board shall not have the power to administer programs or set policy.

(B) All advisory board members shall be appointed by the county judge. Confirmation of advisory board members by a quorum court shall not be required.

(C) An advisory board may contain any number of members as may be provided by the ordinance creating the advisory board.

(D) The term of all advisory board members shall not exceed three (3) years.

(2) **ADMINISTRATIVE BOARDS.** (A) Administrative boards may be established to exercise administrative powers granted by county ordinance, except that the board may not be authorized to pledge the credit of the county. The administrative board shall be a body politic and corporate, with power to contract and be contracted with and sue and be sued. As to actions of tort, the board shall be considered as an agency of the county government and occupy the same status as a county. No board member shall be liable in court individually for an act performed by him as a board member unless the damages caused thereby were the results of the board member's malicious acts.

(B) No member of any administrative board shall be interested, either directly or indirectly, in any contract made with the administrative board. A violation of subdivision (2)(B) of this section shall be deemed a felony.

(C) An administrative board may be assigned responsibility for a county department or a subordinate service district.

(D) All administrative board members shall be appointed by the county judge. These appointments shall require confirmation by a quorum court.

(E) An administrative board shall contain five (5) members. Provided, a county library board created after August 1, 1997, shall consist of not less than five (5) members nor more than seven (7) members and shall serve until their successors are appointed and qualified.

(F) The term of any administrative board member shall be for a period of five (5) years. However, the initial appointment of any administrative board shall provide for the appointment of one (1) member for a one-year term, one (1) member for a two-year term, one (1) member for a three-year term, one (1) member for a four-year term, and the remaining member or members for a five-year term, thereby providing, except for county library boards with more than five (5) members, for the appointment of one (1) member annually thereafter.

(3) **BOARDS GENERALLY.** (A) No board member, either advisory or administrative, shall be appointed for more than two (2) consecutive terms.

(B) All persons appointed to an advisory or administrative board shall be qualified electors of the county. A quorum court may prescribe by ordinance additional qualifications for appointment to county administrative board.

(C) All board members appointed to either an advisory or administrative board shall subscribe to the oath of office within ten (10) days from the date of appointment. Evidence of oath of office shall be filed with the county clerk. Failure to do so shall be deemed to constitute rejection of the office, and the county judge shall appoint a board member to fill the vacancy.

(D) No member of a quorum court shall serve as a member of a county advisory or administrative board.

(E) A person may be removed from a county board for cause by the county judge with confirmation by resolution of the quorum court. Written notification stating the causes for removal shall be provided to the board member prior to the date established for quorum court consideration of removal, and the board member shall be afforded the opportunity to meet with the quorum court in their deliberation of removal.

(F) Appeals from removal of a county board member shall be directed to the circuit court of the respective county within thirty (30) days after the removal is confirmed by the quorum court.

History. Acts 1977, No. 742, § 103; A.S.A. 1947, § 17-4106; Acts 1997, No. 359, § 1.

Amendments. The 1997 amendment added the last sentence in (2)(E); and, in

(2)(F), substituted "the remaining member or members" for "one (1) member" and inserted "except for county library boards with more than five (5) members."

14-14-706. Register of board appointment.

The clerk of the county court shall maintain a register of county advisory and administrative board appointments established by a county quorum court, including:

- (1) The name of the board;
- (2) The ordinance reference number establishing the board;
- (3) The name of the board member;
- (4) The date of appointment; and
- (5) The expiration date of the appointments.

History. Acts 1977, No. 742, § 104;
A.S.A. 1947, § 17-4107.

14-14-707. Conduct of affairs of county boards.

(a) **INITIAL MEETING.** The time and place for the initial meeting of a county board shall be established by the county judge through written notification of each board member.

(b) **MEETING DATES AND NOTIFICATION.** All boards shall by rule provide for the date, time, and place of regular monthly meetings or other regularly scheduled meetings. This information shall be filed with the county court, and notification of all meetings shall be conducted as established by law for public meetings.

(c) **SPECIAL MEETINGS.** Special meetings may be called by two (2) or more board members upon written notification of all members not less than two (2) calendar days prior to the calendar day fixed for the time of the meeting.

(d) **QUORUM.** A majority of board members shall constitute a quorum for the purpose of conducting business and exercising powers and responsibilities. Board action may be taken by a majority vote of those present and voting unless the ordinance creating the board requires otherwise.

(e) **ORGANIZATION AND VOTING.** At its initial meeting of a quorum of members, each county board shall elect one (1) of their members to serve as chairperson of the board for a term of one (1) year. The chairperson shall thereafter preside over the board throughout his term as chairperson. In the absence of the chairperson, a quorum of the board may select one (1) of its members to preside and conduct the affairs of the board.

(f) **MINUTES.** All boards shall provide for the keeping of written minutes which include the final vote on all board actions indicating the vote of each individual member on the question.

History. Acts 1977, No. 742, § 105;
A.S.A. 1947, § 17-4108.

14-14-708. Subordinate service districts generally.

(a) **AUTHORITY TO ESTABLISH.** Subordinate service districts to provide one (1) or more of the services authorized to be provided by county governments may be established, operated, altered, combined, enlarged, reduced, or abolished by the county quorum court by ordinance.

(b) **AREA SERVED.** A subordinate service district may include all, or any part, of the jurisdictional areas of county government. Two (2) or more county governments may create a joint subordinate service district by interlocal agreement.

(c) **PURPOSES OF DISTRICT.** A subordinate service district is defined as a county service organization established to provide one (1) or more county services or additions to county services and financed from revenues secured from within the designated service area through the levy and collection of service charges. These districts may be created for the following purposes:

(1) Emergency services, including ambulance services, civil defense services, and fire prevention and protection services;

(2) Solid waste services, including recycling services, and solid waste collection and disposal services;

(3) Water, sewer, and other utility services, including sanitary and storm sewers and sewage treatment services, water supply and distribution services, water course, drainage, irrigation, and flood control services;

(4) Transportation services, including roads, bridges, airports and aviation services, ferries, wharves, docks, and other marine services, parking services, and public transportation services.

(d) **FINANCING.** Notwithstanding any provisions of law requiring uniform taxation within a county, a quorum court, by ordinance, may establish subordinate service districts and levy service charges to provide and finance any county service or function which a county is otherwise authorized to undertake.

History. Acts 1981, No. 874, § 1, 1983, No. 233, § 2; A.S.A. 1947, § 17-4109.

CASE NOTES

ANALYSIS

Creation.
Mandatory fees.

Creation.

As to ordinances creating a subordinate service district under repealed statute, see *Eaton v. McCuen*, 273 Ark. 154, 617 S.W.2d 341 (1981).

Mandatory Fees.

Before mandatory fees, and tax liens for those mandatory fees, can be imposed, there must be notice and a public hearing. *Freeman v. Curry*, 299 Ark. 263, 772 S.W.2d 586 (1989).

14-14-709. Establishment of subordinate service districts.

(a) **PROCEDURE GENERALLY.** A subordinate service district may be established by ordinance of the quorum court in the following manner:

(1) Upon petition to the quorum court by twenty-five percent (25%) of the number of realty owners within the proposed subordinate service district, the owners of twenty-five percent (25%) of the realty in the area of the proposed subordinate service district, and the owners of twenty-five percent (25%) of the assessed value of the realty within the proposed subordinate service district, the quorum court shall set a date for a public hearing and shall give notice of the hearing on the petition to form the proposed subordinate service district. Following the public hearing, the court may either adopt an ordinance creating the subordinate service district or refuse to act further on the matter.

(2) If hearings indicate that a geographic area desires exclusion from the proposed subordinate service district, the quorum court may amend the boundaries of the proposed subordinate service district to exclude the property in that area.

(3) Where an ordinance is adopted establishing a subordinate service district, the quorum court shall, in addition to all other requirements, publish notice of the adoption of the ordinance. The notice shall include a statement setting out the elector's right to protest. If within thirty (30) days of the notice, twenty-five percent (25%) or more of the number of realty owners within the proposed subordinate service district, the owners of twenty-five percent (25%) of the realty in the area of the proposed subordinate service district, and the owners of twenty-five percent (25%) of the assessed value of the realty within the proposed subordinate service district file a written protest, by individual letter or petition, then the ordinance creating the subordinate service district shall be void.

(b) **ORDINANCE REQUIREMENTS.** An ordinance to establish a subordinate service district shall include:

- (1) The name of the proposed district;
- (2) A map containing the boundaries of the proposed district;
- (3) The convenience or necessity of the proposed district;
- (4) The services to be provided by the proposed district;
- (5) The estimated cost of services to be provided and methods of financing the proposed services. Service charges adopted by a quorum court shall be equally administered on a per capita, per household, per unit of service, or a combination of these methods. Service charges adopted by the court on a per capita or per household method shall be administered equally without regard to an individual or household availing themselves of the service; and

- (6) The method for administering the proposed district.

(c) **INITIATIVE AND REFERENDUM.** All provisions of Arkansas Constitution, Amendment 7, shall apply to the establishment of county subordinate service areas.

History. Acts 1981, No. 874, § 1; 1983, No. 233, § 2; A.S.A. 1947, § 17-4109; Acts 1993, No. 317, § 1.

Amendments. The 1993 amendment rewrote (a); and redesignated (b)(4) as (b)(2), and (b)(2) as (b)(4).

CASE NOTES

Interference with Property Ownership.

The General Assembly intended for taxpayers to have notice and an opportunity for a special referendum before a substan-

tial interference with property ownership, such as a tax lien, is imposed. *Freeman v. Curry*, 299 Ark. 263, 772 S.W.2d 586 (1989).

14-14-710. Modification or dissolution of subordinate service districts.

(a) **MODIFICATION.** A quorum court may, after adoption of an ordinance, with notice and public hearing:

(1) Increase, decrease, or terminate the type of services that the subordinate service district is authorized to provide unless fifty percent (50%) of the electors residing in the district protest;

(2) Enlarge the district to include adjacent land if fifty percent (50%) or more of the electors residing in the proposed addition do not protest;

(3) Combine the subordinate service district with another subordinate service district unless fifty percent (50%) of the electors in either district protest;

(4) Abolish the subordinate service district unless fifty percent (50%) of the electors in the district protest;

(5) Reduce the area of a district by removing property from the district unless fifty percent (50%) of the electors residing in the territory to be removed from the district protest;

(6) Change the method for administering the subordinate service district unless fifty percent (50%) of the electors in the district protest;

(7) All changes in subordinate service districts may be submitted to the electors of the existing or proposed district, whichever is larger, by initiative or referendum.

(b) **DISSOLUTION.** As provided in this section, a quorum court may abolish or combine subordinate service districts by ordinance. Dissolution or any combination of service districts shall provide for the following considerations:

(1) The transfer or other disposition of property and other rights, claims, and assets of the district;

(2) The payment of all obligations from the resources of the district;

(3) The payment of all costs of abolishing or combining a district from the resources of the districts involved;

(4) The honoring of any bond, debt, contract, obligation, or cause of action accrued or established under the subordinate district;

(5) The provision for the equitable disposition of the assets of the district, for adequate protection of the legal rights of employees of the district, and for adequate protection of legal rights of creditors; and

(6) The transfer of all property and assets to the jurisdiction of the county court.

History. Acts 1981, No. 874, § 1; 1983, No. 233, § 2; A.S.A. 1947, § 17-4109.

14-14-711. Administration of subordinate service districts.

(a) **GENERALLY.** A subordinate service district may be administered directly as a part of the office of the county judge, as a part of a department with or without an advisory or administrative board, or as a separate department with or without an advisory or administrative board;

(b) **BUDGET.** The budget for each subordinate service district shall be appropriated as other funds of the county;

(c) **TAX LISTS.** Upon request, the county assessor shall provide the quorum court with the assessed or taxable value of all property in a proposed established subordinate service district and a list of property owners and residential structures based on the last completed assessment roll of the county;

(d) **SERVICE CHARGES.** (1) Service charges for subordinate service districts shall be entered on tax notices and are to be collected with the real and personal property taxes of the county. No collector of taxes shall accept payment of any property taxes where such taxpayer has been billed for services authorized by a subordinate service district unless the service charge is also receipted. If a property owner fails to pay the service charge, it shall become a lien on the property.

(2) A subordinate service district may choose to forgo county collection of its annual service charges and instead collect its service charges on a suitable periodic basis if the subordinate service district provides its own billing and collection service.

(e) **USE OF FUNDS.** Funds raised through service charges for a subordinate service district may be used only for subordinate service district purposes. These public funds shall be maintained in the county treasury and accounted for as an enterprise fund. Disbursements of all subordinate service district funds shall be made only upon voucher or claim presented to and approved by the county judge, acting in his capacity as the chief executive officer of the county, unless otherwise provided by ordinance establishing the district.

History. Acts 1981, No. 874, § 1; 1983, No. 233, § 2; A.S.A. 1947, § 17-4109; Acts 1995, No. 552, § 1.

Amendments. The 1995 amendment inserted "and are" in the first sentence in (d)(1); and added (d)(2).

CASE NOTES

Mandatory Fees.

Before mandatory fees, and tax liens for those mandatory fees, can be imposed,

there must be notice and a public hearing. *Freeman v. Curry*, 299 Ark. 263, 772 S.W.2d 586 (1989).

14-14-712. Reorganization of existing county boards and commissions.

(a) All laws providing for the organization, jurisdiction, and operation of county boards and commissions, except the laws relating to county hospital boards of governors and except laws relating to county nursing home boards, shall be given the status of county ordinance until June 30, 1978. These organizations shall continue to function under those respective laws until reorganized by county ordinance. The organizations subject to reorganization by county ordinance are, but are not limited to, the following:

- (1) County library boards;
- (2) County planning boards;
- (3) County park commissions;
- (4) County welfare boards.

(b) Advisory board members appointed as a result of a reorganizational ordinance shall have a term of appointment as specified in this subchapter.

(c) Ordinances enacted by a county quorum court for the reorganization of county government into county departments, with or without advisory or administrative boards or subordinate service districts, may be adopted in a single reading of the court.

History. Acts 1977, No. 742, § 107; 1977 (Ex. Sess.), No. 13, § 6; 1979, No. 741, § 1; A.S.A. 1947, § 17-4110.

Cross References. County hospitals board of governors, § 14-263-101 et seq.

SUBCHAPTER 8 — LEGISLATIVE POWERS

SECTION.

- 14-14-801. Powers generally.
 14-14-802. Providing of services generally.
 14-14-803. Providing of facilities.
 14-14-804. Regulatory powers.
 14-14-805. Powers denied.
 14-14-806. Powers requiring state delegation.

SECTION.

- 14-14-807. Restrictive provisions.
 14-14-808. Consistency with state regulations required.
 14-14-809. Concurrent powers.
 14-14-810. Improvements to roadways serving private property.
 14-14-811. County judge's salary.
 14-14-812. Cemetery access roads.

Cross References. Local government reserve funds, § 14-73-101.

Effective Dates. Acts 1977, No. 742, § 118: Mar. 24, 1977. Emergency clause provided: "It is hereby found by the General Assembly that the passage of Amendment 55 to the Arkansas Constitution has caused major changes in the structure of county government and that, because of said changes, a need exists to modernize laws affecting county government. It is

further found that the citizens of the several counties of the State are in need of services provided by county governments and said services can best be provided under the provisions of this Act. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the public health, welfare and safety, shall be in effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., §§ 193-230, 423-578.

C.J.S. 20 C.J.S., Counties, §§ 49, 50 and § 165 et seq.

UALR L.J. Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

Derden, Survey of Arkansas Law Constitutional Law, 2 UALR L.J. 188.

Goldner, A Call for Reform of Arkansas Municipal Law, 15 UALR L.J. 175.

14-14-801. Powers generally.

(a) As provided by Arkansas Constitution, Amendment 55, § 1, Part (a), a county government, acting through its county quorum court, may exercise local legislative authority not expressly prohibited by the Arkansas Constitution or by law for the affairs of the county.

(b) These powers include, but are not limited to, the power to:

(1) Levy taxes in a manner prescribed by law;

(2) Appropriate public funds for the expenses of the county in a manner prescribed by ordinance;

(3) Preserve peace and order and secure freedom from dangerous or noxious activities. However, no act may be declared a felony;

(4) For any public purpose, contract or join with any other county, with any political subdivision, or with the federal government;

(5) Create, consolidate, separate, revise, or abandon any elected office, except during the term thereof, if a majority of those voting on the question at a general election have approved the action;

(6) Fix the number and compensation of deputies and county employees;

(7) Fix the compensation of each county officer within a minimum and maximum to be determined by law;

(8) Fill vacancies in elected county offices;

(9) Have the power to override the veto of the county judge by a vote of three-fifths ($\frac{3}{5}$) of the total membership of the quorum court;

(10) Provide for any service or performance of any function relating to county affairs;

(11) Impose a special assessment reasonably related to the cost of any special service or special benefit provided by county government or impose a fee for the provisions of a service;

(12) Provide for its own organization and management of its affairs; and

(13) Exercise other powers, not inconsistent with law, necessary for effective administration of authorized services and functions.

History. Acts 1977, No. 742, § 69; A.S.A. 1947, § 17-3801.

CASE NOTES

ANALYSIS

Constitutionality.
Compensation.
County employees.
Elected officials.
Fees.
Medical services.

Constitutionality.

County quorum court ordinance that required all county constitutional offices to be open during certain hours related to the performance of person in providing necessary services as a tax collector and, as such, was within the express powers granted the quorum court by Ark. Const. Amend. 55 and this section, and not in violation of the separation of powers provisions of the Arkansas Constitution. *Walker v. County of Washington*, 263 Ark. 317, 564 S.W.2d 513 (1978).

Compensation.

While it is clear that a county sheriff has the authority to appoint his deputies, it is equally clear that the compensation for these individuals is within the exclusive jurisdiction of the quorum court. *Venhaus v. Adams*, 295 Ark. 606, 752 S.W.2d 20 (1988).

County Employees.

A county ordinance that expressly required that a county employee be given two weeks notice prior to involuntary termination, that the reasons for such action had to be filed in writing, and that the employee had a right to appeal such action to a grievance board, did not, on its face, or as applied to sheriff's deputies, violate the separation of powers doctrine under Arkansas law by encroaching upon the executive branch of county government. *Wilson v. Robinson*, 668 F.2d 380 (8th Cir. 1981).

Elected Officials.

Ordinance by county quorum court prohibiting nepotism by elected county officials is a valid and properly adopted ordinance. *Henderson v. Russell*, 267 Ark. 140, 589 S.W.2d 565 (1979).

Fees.

Where ordinances of county quorum court levying additional local recording

fees on deeds and other instruments were inconsistent and in conflict with § 21-6-306, which established a uniform standard amount of recording fee to be charged throughout the state, such ordinances exceeded the local legislative authority granted to the counties by Ark. Const. Amend. 55 and this section and were, therefore, void, and the moneys collected thereunder had to be refunded. *Kollmeyer v. Greer*, 267 Ark. 632, 593 S.W.2d 29 (1980).

Medical Services.

Section 14-14-801 et seq. and § 20-13-301 et seq. were not intended to provide alternative procedures for the establishment of emergency medical services by a county, since to hold that these provisions were intended to provide alternative methods would effectively render § 20-13-301 et seq. a nullity, as there would be no reason for a quorum court to choose the more arduous route required by § 20-13-301 et seq. when it could accomplish the same result more easily under § 14-14-801 et seq. *Vandiver v. Washington County*, 274 Ark. 561, 628 S.W.2d 1 (1982).

Section 14-14-801 et seq. gives the quorum court of any county the authority to provide for emergency medical services; however, the authority created under these provisions is governed and limited by the procedural requirements of § 20-13-301 et seq. *Vandiver v. Washington County*, 274 Ark. 561, 628 S.W.2d 1 (1982).

The general county powers law found in this section is circumscribed by § 20-13-303 when the method of financing a county emergency medical service is by service charge. *West Wash. County Emergency Medical Servs. v. Washington County*, 313 Ark. 76, 852 S.W.2d 137 (1993).

The term "as provided by law" in this section does not refer to § 20-13-303 in cases in which a service charge is to be imposed. *West Wash. County Emergency Medical Servs. v. Washington County*, 313 Ark. 76, 852 S.W.2d 137 (1993).

14-14-802. Providing of services generally.

(a) A county government, acting through the county quorum court, shall provide, through ordinance, for the following necessary services for its citizens:

(1) The administration of justice through the several courts of record of the county;

(2) Law enforcement protection services and the custody of persons accused or convicted of crimes;

(3) Real and personal property tax administration, including assessments, collection, and custody of tax proceeds;

(4) Court and public records management, as provided by law, including registration, recording, and custody of public records; and

(5) All other services prescribed by state law for performance by each of the elected county officers or departments of county government.

(b)(1) A county government, acting through the quorum court, may provide through ordinance for the establishment of any service or performance of any function not expressly prohibited by the Arkansas Constitution or by law.

(2) These legislative services and functions include, but are not limited to, the following services and facilities:

(A) Agricultural services, including:

(i) Extension services, including agricultural, home economic, and community development;

(ii) Fairs and livestock shows and sales services;

(iii) Livestock inspection and protection services;

(iv) Market and marketing services;

(v) Rodent, predator, and vertebrate control services; and

(vi) Weed and insect control services;

(B) Community and rural development services, including:

(i) Economic development services;

(ii) Housing services;

(iii) Open spaces;

(iv) Planning, zoning, and subdivision control services;

(v) Urban and rural development, rehabilitation, and redevelopment services; and

(vi) Watercourse, drainage, irrigation, and flood control services;

(C) Community services, including:

(i) Animal control services;

(ii) Cemetery, burial, and memorial services;

(iii) Consumer education and protection services;

(iv) Exhibition and show services;

(v) Libraries, museums, civic center auditoriums, and historical, cultural, or natural site services;

(vi) Park and recreation services; and

(vii) Public camping services;

(D) Emergency services, including:

(i) Ambulance services;

- (ii) Civil defense services;
- (iii) Fire prevention and protection services; and
- (iv) Juvenile attention services;
- (E) Human services, including:
 - (i) Air and water pollution control services;
 - (ii) Child care, youth, and senior citizen services;
 - (iii) Public health and hospital services;
 - (iv) Public nursing and extended care services; and
 - (v) Social and rehabilitative services;
- (F) Solid waste services, including:
 - (i) Recycling services; and
 - (ii) Solid waste collection and disposal services;
- (G) Transportation services, including:
 - (i) Roads, bridges, airports, and aviation services;
 - (ii) Ferries, wharves, docks, and other marine services;
 - (iii) Parking services; and
 - (iv) Public transportation services;
- (H) Water, sewer, and other utility services, including:
 - (i) Sanitary and storm sewers and sewage treatment services; and
 - (ii) Water supply and distribution services;
- (I) Other services related to county affairs.

History. Acts 1977, No. 742, § 70;
A.S.A. 1947, § 17-3802.

Cross References. Community redevelopment financing, § 14-168-201 et seq.

CASE NOTES

ANALYSIS

Constitutionality.
Construction.
Emergency services.
Gravedigging.

Constitutionality.

Constitutionality of this section was upheld. *Thruston v. Little River County*, 310 Ark. 188, 832 S.W.2d 851 (1992).

This section does not violate the uniformity requirement of Ark. Const. Amend. 14. *Villines v. Tucker*, 324 Ark. 13, 918 S.W.2d 153 (1996).

This statute is not unconstitutional and in contravention Ark. Const. Amend. 55, § 1(a). *Villines v. Tucker*, 324 Ark. 13, 918 S.W.2d 153 (1996).

Construction.

Providing for the administration of justice under subdivision (a)(1) is a mandatory service; providing a museum under subdivision (b)(2)(C)(v) is a discretionary service the county is authorized to offer. *Haynes v. Faulkner County*, 326 Ark. 557, 932 S.W.2d 328 (1996).

Designation of county building as a museum was not an illegal exaction since § 14-14-1102(b)(3) and Ark. Const. Amend. 55, § 3, provide that the County Judge is the custodian of county property and is therefore authorized to determine how county property shall be used; moreover, subdivision (b)(2)(C)(v) of this section and § 13-5-501 et seq. authorize the County to provide for a county museum. *Haynes v. Faulkner County*, 326 Ark. 557, 932 S.W.2d 328 (1996).

Emergency Services.

Section 14-14-801 et seq. and § 20-13-301 et seq. were not intended to provide alternative procedures for the establishment of emergency medical services by a county, since to hold that these provisions were intended to provide alternative methods would effectively render § 20-13-301 et seq. a nullity, as there would be no reason for a quorum court to choose the more arduous route required by § 20-13-301 et seq. when it could accomplish the same result more easily under § 14-14-

801 et seq. *Vandiver v. Washington County*, 274 Ark. 561, 628 S.W.2d 1 (1982).

Section 14-14-801 et seq. gives the quorum court of any county the authority to provide for emergency medical services; however, the authority created under these provisions is governed and limited by the procedural requirements of § 20-13-301 et seq. *Vandiver v. Washington County*, 274 Ark. 561, 628 S.W.2d 1 (1982).

Gravedigging.

Although gravedigging services can be provided when this section is complied with, where there was no indication from the record that the quorum court knew of the county's free gravedigging services

other than testimony from a county judge, and even if the quorum court had known of the gravedigging services, it took no action by ordinance or otherwise to authorize such services; the provision of these services was invalid. *Dudley v. Little River County*, 305 Ark. 102, 805 S.W.2d 645 (1991).

Cited: *Kollmeyer v. Greer*, 267 Ark. 632, 593 S.W.2d 29 (1980); *Wilson v. Robinson*, 506 F. Supp. 1236 (E.D. Ark. 1981); *Hall v. Fisher*, 285 Ark. 222, 685 S.W.2d 803 (1985); *Venhaus v. Adams*, 295 Ark. 606, 752 S.W.2d 20 (1988); *West Wash. County Emergency Medical Servs. v. Washington County*, 313 Ark. 76, 852 S.W.2d 137 (1993).

14-14-803. Providing of facilities.

The power of county government to provide services includes the power to provide necessary and convenient facilities to support the services.

History. Acts 1977, No. 742, § 71; A.S.A. 1947, § 17-3803.

CASE NOTES

Cited: *Mears v. Hall*, 263 Ark. 827, 569 S.W.2d 91 (1978).

14-14-804. Regulatory powers.

The power of a county government to provide services includes the power to exercise regulatory powers in conjunction with the services.

History. Acts 1977, No. 742, § 72; A.S.A. 1947, § 17-3804.

14-14-805. Powers denied.

Each county quorum court in the State of Arkansas exercising local legislative authority is prohibited the exercise of the following:

(1) Any legislative act that applies to or affects any private or civil relationship, except as an incident to the exercise of local legislative authority;

(2) Any legislative act that applies to or affects the provision of collective bargaining, retirement, workers' compensation, or unemployment compensation. However, subject to the limitations imposed by the Arkansas Constitution and state law regarding these subject areas, a quorum court may exercise any legislative authority with regard to employee policy and practices of a general nature, including, but not limited to, establishment of general vacation and sick leave policies, general office hour policies, general policies with reference to nepotism,

or general policies to be applicable in the hiring of county employees. Legislation promulgated by a quorum court dealing with matters of employee policy and practices shall be applicable only to employees of the county and shall not apply to the elected county officers of the county. Legislation applying to employee policy practices shall be only of a general nature and shall be uniform in application to all employees of the county. The day-to-day administrative responsibility of each county office shall continue to rest within the discretion of the elected county officials;

(3) Any legislative act that applies to or affects the public school system, except that a county government may impose an assessment, where established by the General Assembly, reasonably related to the cost of any service or specific benefit provided by county government and shall exercise any legislative authority which it is required by law to exercise regarding the public school system;

(4) Any legislative act which prohibits the grant or denial of a certificate of public convenience and necessity;

(5) Any legislative act that establishes a rate or price otherwise determined by a state agency;

(6) Any legislative act that defines as an offense conduct made criminal by state law, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of five hundred dollars (\$500) for any one (1) specified offense or violation, or double that sum for repetition of the offense or violation. If an act prohibited or rendered unlawful is, in its nature, continuous in respect to time, the fine or penalty for allowing the continuance thereof, in violation of the ordinance, shall not exceed two hundred fifty dollars (\$250) for each day that it may be unlawfully continued;

(7) Any legislative act that applies to or affects the standards of professional or occupational competence as prerequisites to the carrying on of a profession or occupation;

(8) Any legislative act of attainder, ex post facto law, or law impairing the obligations of contract shall not be enacted, and no conviction shall work corruption of blood or forfeiture of estate;

(9) Any legislative act which grants to any citizen or class of citizens privileges or immunities which upon the terms shall not equally belong to all citizens;

(10) Any legislative act which denies the individual right of property without just compensation;

(11) Any legislative act which lends the credit of the county for any purpose whatsoever or upon any interest-bearing evidence of indebtedness, except bonds as may be provided for by the Arkansas Constitution. This subdivision does not apply to revenue bonds which are deemed not to be a general obligation of the county;

(12) Any legislative act that conflicts with the exercise by municipalities of any expressed, implied, or essential powers of municipal government;

(13) Any legislative act contrary to the general laws of the state.

History. Acts 1977, No. 742, § 73; 1979, No. 413, § 15; A.S.A. 1947, § 17-3805.

Cross References. Ordinances declaring agricultural operations nuisances void, § 2-4-105.

CASE NOTES

ANALYSIS

Acts of attainder.
County employees.
Public school systems.

Acts of Attainder.

All regulations, zoning or otherwise, which affect landowners are not acts of attainder. *Johnson v. Sunray Servs., Inc.*, 306 Ark. 497, 816 S.W.2d 582 (1991).

County Employees.

A county ordinance that provided a comprehensive scheme of employment policies for county employees including procedural steps to be followed in terminating their employment was clearly authorized by subdivision (2), and where a sheriff failed to establish the existence of any state decisional or positive law that contradicted the presumption that the ordinance and statute were constitutionally valid, the sheriff was required to comply with the ordinance's notice and grievance procedures in order to terminate the employment of his deputy sheriffs. *Wilson v. Robinson*, 668 F.2d 380 (8th Cir. 1981).

A county ordinance that expressly required that a county employee be given two weeks notice prior to involuntary termination, that the reasons for such action had to be filed in writing, and that the employee had a right to appeal such action to a grievance board, did not, on its face, or as applied to sheriff's deputies, violate the separation of powers doctrine under Arkansas law by encroaching upon

the executive branch of county government. *Wilson v. Robinson*, 668 F.2d 380 (8th Cir. 1981).

Public School Systems.

Where the General Assembly has not otherwise provided, the interest earned on school taxes collected belongs to the schools; therefore, a county quorum court ordinance that authorized the county collector to deposit into the county general fund all interest earned on school tax moneys held by the collector prior to transfer of those funds to the county treasurer was invalid, since the ordinance permitted the county to use the school tax money to earn money for the county without passing on any of the interest earned to the school districts, and also since the county was prohibited from passing any legislation "affecting public school systems," which this ordinance surely did affect. *Mears v. Little Rock School Dist.*, 268 Ark. 30, 593 S.W.2d 42 (1980).

Where the General Assembly had not passed any legislation establishing an "assessment" reasonably related to the cost of any service or specific benefit provided by the county government, the county quorum court was without the authority to order the school districts to pay a pro rata share of the salaries and expenses incurred in the collection of taxes by the county officers, other than the assessor's office. *Mears v. Little Rock School Dist.*, 268 Ark. 30, 593 S.W.2d 42 (1980).

Cited: *Wilson v. Robinson*, 506 F. Supp. 1236 (E.D. Ark. 1981).

14-14-806. Powers requiring state delegation.

Each county quorum court in the State of Arkansas exercising local legislative authority is prohibited the exercise of the following powers, unless the power is specifically delegated by the General Assembly:

(1) The legislative power to authorize a tax on income or the sale of goods or services. This subdivision shall not be construed to limit the authority of county government to levy any other tax or establish the rate of any other tax which is not inconsistent with the Arkansas Constitution or law;

(2) The legislative power to regulate private activities beyond its geographic limits;

(3) The legislative power to impose a duty on or regulate another unit of local government. However, nothing in this limitation shall affect the right of a county to enter into and enforce an agreement of intergovernmental cooperation;

(4) The legislative power to regulate any form of gambling, lotteries, or gift enterprises.

History. Acts 1977, No. 742, § 74; A.S.A. 1947, § 17-3806.

Rural community projects, § 14-270-101 et seq.

Cross References. County gross receipts tax on hotels, motels and restaurants, § 14-20-112.

Taxation generally, § 26-73-101 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Kindt, Legalized Gambling Activities as Subsidized by Taxpayers, 48 Ark. L. Rev. 889.

14-14-807. Restrictive provisions.

A county exercising local legislative power is subject to the following provisions. These provisions are a prohibition on the legislative power of a county acting other than as provided:

(1) All state laws providing for the corporation or disincorporation of cities and towns; for the annexation, disannexation, or exclusion of territory from a city or town; and for the creation, abandonment, or boundary alteration of counties;

(2) All state laws establishing legislative procedures or requirements for county government;

(3) All laws requiring elections;

(4) All laws which regulate planning or zoning. However, a county quorum court, in the exercise of its local legislative power, may either accept, modify, or reject recommendations of the county planning board. Modifications of the recommendations shall be made by the procedures provided in § 14-17-201 et seq. The quorum court is empowered to initiate its own planning and zoning laws;

(5) All laws directing or requiring a county government, or any officer or employee of a county government, to carry out any function or provide any service. However, nothing in this subdivision shall be construed to prevent counties from abolishing or consolidating an office under the provisions of Arkansas Constitution, Amendment 55, § 2, Part (b), nor the reassignment of statutory delegated functions or services which such reassignment is permitted by law if the abolition, consolidation, or reassignment shall not alter the obligation of the county to continue providing the services previously provided by the abolished or consolidated office;

(6) All laws regulating finance or borrowing procedures and powers of local government;

(7) All laws governing eminent domain;

- (8) All laws governing public information and open meetings; and
- (9) All laws governing the vacation of roads, streets, or alleys.

History. Acts 1977, No. 742, § 75; 1981, No. 278, § 1; A.S.A. 1947, § 17-3807.

Cross References. County planning boards, § 14-17-201 et seq.

CASE NOTES

Elections.

An election commissioner is not given the sole authority under subdivision (3) to determine the amount of money necessary to conduct an election, since it is not intended by the General Assembly that the quorum courts be deprived of their

fiscal authority over the funding of elections. *Union County v. Union County Election Comm'n*, 274 Ark. 286, 623 S.W.2d 827 (1981).

Cited: *Walker v. County of Washington*, 263 Ark. 317, 564 S.W.2d 513 (1978).

14-14-808. Consistency with state regulations required.

(a) A county government exercising local legislative authority is prohibited the exercise of any power in any manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control.

(b) The exercise of legislative authority is inconsistent with state law or regulation if it establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation.

(c) An area is affirmatively subjected to state control if a state agency or officer is directed to establish administrative rules and regulations governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency.

History. Acts 1977, No. 742, § 76; A.S.A. 1947, § 17-3808.

CASE NOTES

Cited: *Kollmeyer v. Greer*, 267 Ark. 632, 593 S.W.2d 29 (1980).

14-14-809. Concurrent powers.

(a) If a county government is authorized to regulate an area which the state by statute or administrative regulation also regulates, the local government may regulate the area only by enacting ordinances which are consistent with state law or administrative regulation.

(b) If state statute or administrative regulation prescribes a single standard of conduct, an ordinance is consistent if it is identical to the state statute or administrative regulation.

(c) If state statute or administrative regulation prescribes a minimal standard of conduct, an ordinance is consistent if it establishes a standard which is the same as, or higher or more stringent than the state standard.

(d) A county government may adopt ordinances which incorporate by reference state statutes and administrative regulations in areas in which a local government is authorized to act.

History. Acts 1977, No. 742, § 77;
A.S.A. 1947, § 17-3809.

RESEARCH REFERENCES

Ark. L. Rev. Case Note, *Johnson v. to the NIMBY Syndrome*, 45 Ark. L. Rev. Sunray Services, Inc.: Possible Solutions 657.

CASE NOTES

Cited: *Johnson v. Sunray Servs., Inc.*,
306 Ark. 497, 816 S.W.2d 582 (1991).

14-14-810. Improvements to roadways serving private property.

(a)(1) In the passage of this section, the General Assembly is cognizant of the responsibilities of the county judge and of the county quorum court with respect to the establishment and operation of public roads and for the construction, maintenance, repair, and upkeep of county roads. The General Assembly is also mindful of the importance of providing reasonable access to the public roads system for the procurement of emergency medical services; the education of school-age children transported by school buses; the obtaining of mail and the goods of commerce; the marketing of the agricultural, livestock, and poultry products produced on Arkansas farms; and access to numerous other services essential to the health, safety, and welfare of thousands of rural families in this state.

(2)(A) It is, therefore, the purpose and intent of this section to authorize the quorum courts of counties having a population of no less than seven thousand (7,000) nor more than seven thousand five hundred (7,500), according to the 1980 Federal Decennial Census, to enact ordinances authorizing the county judge to provide for the use of county road machinery and equipment, materials, supplies, and labor to make improvements to the roadways serving private property that are deemed essential, under standards and procedures established by the court, to provide access to the public roads of the county in cases of bad weather or the occurrence of other events which may impair citizens of this state from obtaining reasonable and necessary access to the public roads of this state.

(B)(i) The ordinance enacted by the quorum court shall prescribe the conditions, circumstances, and limitations under which the county judge is authorized to make improvements or to perform work upon roads used for access from private property to the public roads.

(ii) In addition, the court may request the county judge to file reports from time to time, outlining the work performed in providing access of private property to the public roads, in such detail and at such frequencies as may be requested by the court.

(b)(1) All work performed by the county judge on improvements necessary to make private property accessible to the public roads, as authorized in this section, and which is performed in compliance with the ordinance adopted by the county quorum court authorizing the work, shall be deemed to be public work for which public funds may be expended.

(2) All expenditures of county funds made by the county judge in compliance with this section are determined to be for a public purpose, as defined in this section.

History. Acts 1981, No. 268, §§ 1, 2;
A.S.A. 1947, §§ 17-3810, 17-3811.

14-14-811. County judge's salary.

The quorum court of each county is authorized to pay a portion of the salary of the county judge from the county road fund. However, the portion of the county judge's salary paid from the county road fund shall not exceed fifty percent (50%).

History. Acts 1987, No. 675, § 2.

A.C.R.C. Notes. Acts 1987, No. 675, § 1, provided: "It is hereby found and determined by the General Assembly that Section 78 of Chapter 4 of Act 742 of 1977, as amended, and various other laws charge the county judge with the responsibility of constructing, maintaining, and operating a system of county roads, bridges, and ferries and gives the county judge broad administrative authority and responsibility with respect to the construction, maintenance, and operation of county roads; that as a result of this responsibility, a substantial portion of each county judge's time must be dedicated to the administration of the county

road system; that under current interpretation of the present law, there is no clear authority to pay any portion of the salary of the county judge out of county road funds; that fairness and equity dictate that the county road system bear a fair share of the salary of the county judge since a substantial part of his time is dedicated to his responsibilities as administrator of the county road system. Therefore, it is the intent and purpose of this act to authorize the payment of up to one-half (½) of the salary of each county judge from the county road fund."

Cross References. Compensation of elected county officers, § 14-14-1204.

14-14-812. Cemetery access roads.

(a) A "cemetery", as used in this section, means any burying place for the dead, a burial plot, a graveyard, or any land, public or private, dedicated and used for the interment of human remains which includes at least six (6) grave markers.

(b)(1) The county judges of the several county governments in Arkansas shall be authorized to improve and maintain any roads across public or private lands used or to be used for access to a cemetery.

(2) The cemetery access roads shall be constructed to a standard and nature to permit their use by automobiles.

History. Acts 1995, No. 1317, § 2;
1997, No. 1286, § 2.

Amendments. The 1997 amendment

substituted "includes at least six (6) grave markers" for "includes at least five (5) commercial grave markers" in (a).

Cross References. Cemeteries — Access — Debris — Disturbance, § 5-39-212.
Cemeteries generally, § 20-17-901 et seq.

Cemetery Act for Perpetually Maintained Cemeteries, § 20-17-1001 et seq.
Cemetery improvement districts, § 20-17-1101 et seq.

SUBCHAPTER 9 — LEGISLATIVE PROCEDURES

SECTION.

- 14-14-901. Legislative authority.
- 14-14-902. Quorum court administration.
- 14-14-903. Record of proceedings.
- 14-14-904. Procedures generally.
- 14-14-905. Adoption and amendment of ordinances generally.
- 14-14-906. Penalties for violation of ordinances.
- 14-14-907. Appropriation ordinances.
- 14-14-908. Emergency ordinances or amendments.
- 14-14-909. Incorporation by reference.
- 14-14-910. Interlocal agreements.
- 14-14-911. Veto of ordinances or amendments.

SECTION.

- 14-14-912. Veto override.
- 14-14-913. Adoption and amendment of resolutions.
- 14-14-914. Initiative and referendum generally.
- 14-14-915. Initiative and referendum requirements.
- 14-14-916. Judicial jurisdiction over initiative and referendum.
- 14-14-917. Initiative and referendum elections.
- 14-14-918. Passage of initiative and referendum measures.
- 14-14-919. Referendum petitions on county bond issue.

Effective Dates. Acts 1977, No. 742, § 118: Mar. 24, 1977. Emergency clause provided: "It is hereby found by the General Assembly that the passage of Amendment 55 to the Arkansas Constitution has caused major changes in the structure of county government and that, because of said changes, a need exists to modernize laws affecting county government. It is further found that the citizens of the several counties of the State are in need of services provided by county governments and said services can best be provided under the provisions of this Act. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the public health, welfare and safety, shall be in effect from and after its passage and approval."

Acts 1979, No. 717, § 3: Apr. 3, 1979. Emergency clause provided: "It is hereby found and declared that a referendum period of longer than 30 days on measures pertaining to County bond issues requires an unreasonable waiting period between the adoption of a measure authorizing the bonds and actual issuance; that bond purchasers are reluctant to guarantee interest rates for longer than 30 days; and that counties are severally handicapped under present law in marketing bonds upon the most favorable terms. Therefore, an emer-

gency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 220, § 3: Feb. 26, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is confusion regarding the right of the people to exercise the initiative and referendum with respect to county and municipal measures; that this Act is designed to clarify this confusion and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 406, § 6: Mar. 8, 1991. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the law provides that the county tax is to be levied in November of each year; that the law is unclear on what county tax rate is to apply, if any, if the ordinance levying the tax is repealed by referendum; and that this act is immediately necessary to avoid severe financial hardship on county governments. Therefore, an emergency is

hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1300, § 29: Apr. 10, 1997. Emergency clause provided: "It is found and determined by the General Assembly that Amendment No. 74 to the Arkansas Constitution was adopted by the electors of this state on November 5, 1996; that Amendment No. 74 became effective on adoption and applies to ad valorem property taxes due in 1997; that the tax books of each county will open for collection of taxes in the near future and that local officials and school districts must have direction on procedures and effects of the various actions required. The General Assembly further finds that

Amendment No. 74 requires enactment of legislation to implement the provisions thereof and that this act provides such implementation and should be given effect immediately to accomplish the purposes of Amendment No. 74 in an orderly, effective and efficient manner. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

14-14-901. Legislative authority.

The legislative power of county government is vested in the quorum court of each county of the state, subject to the limitations imposed by the Arkansas Constitution and by state law.

History. Acts 1977, No. 742, § 84; A.S.A. 1947, § 17-4001.

CASE NOTES

County Employees.

Since county judge has power to hire and fire road department employees, a quorum court cannot provide by resolution a procedure for dismissal of such

employees. *Horton v. Taylor*, 767 F.2d 471 (8th Cir. 1985).

Cited: *Wilson v. Robinson*, 506 F. Supp. 1236 (E.D. Ark. 1981).

14-14-902. Quorum court administration.

(a) **SECRETARIAT.** (1) The secretariat of the county quorum court shall be the clerk of the county court of each county unless otherwise provided by county ordinance.

(2) **ALTERNATIVE DESIGNATION.** A quorum court, by ordinance, may provide for the establishment of minimum qualifications and an appropriation for the employment of a secretariat of the court. The employee so designated shall be a staff member of the county clerk or the county judge as may be specified by the ordinance. Where the separate position

of secretariat is created by ordinance, all legislative duties prescribed in this chapter for a county clerk shall thereafter become the duties of the secretariat.

(3) **DUTIES OF THE COUNTY CLERK.** Unless otherwise provided for by county ordinance, the clerk or the deputy clerk shall:

(A) Attend all regular and special meetings of the court;

(B) Perform all administrative and recordkeeping duties prescribed in this chapter; and

(C) Perform all other duties as may be required by the quorum court through county ordinance.

(b) **COUNSEL.** (1) **LEGAL COUNSEL.** The prosecuting attorney or his deputy serving each county shall serve as legal counsel of the quorum court unless otherwise provided by county ordinance.

(2) **ALTERNATIVE DESIGNATION OF LEGAL COUNSEL.** A quorum court may, by ordinance, provide for the appropriation of county funds for the employment of legal counsel to serve the court.

(3) **DUTIES OF LEGAL COUNSEL.** The legal counsel of a quorum court shall:

(A) Attend all regular and special meetings of the court;

(B) Perform all duties prescribed in this chapter; and

(C) Perform all other duties as may be required by a quorum court.

(c) **OTHER ADMINISTRATIVE SERVICES.** A quorum court may authorize and provide through ordinance, for the employment of any additional staff or the purchase of technical services in support of legislative affairs.

History. Acts 1977, No. 742, § 97; 1979, No. 413, §§ 25-27; A.S.A. 1947, § 17-4014.

CASE NOTES

Legal Counsel.

Where county prosecuting attorney was asked to serve as legal counsel to the quorum court under subsection (b) in suit filed by county officials against the county judge and the quorum court, he should be relieved of his responsibility to represent the quorum court under Disciplinary

Rules 5-101, 5-105, 5-107 and Canon 9 of the Code of Professional Responsibility, since he would otherwise be placed in the untenable position of representing county officials who have competing interests with respect to other county officials. *McCuen v. Harris*, 271 Ark. 863, 611 S.W.2d 503 (1981).

14-14-903. Record of proceedings.

(a) **MINUTES.** The quorum court of each county shall provide for the keeping of written minutes which include the final vote on each ordinance or resolution indicating the vote of each individual member on the question.

(b) **COUNTY ORDINANCE AND RESOLUTION REGISTER.** (1) There shall be maintained by each quorum court a county ordinance and resolution register for all ordinances, resolutions, and amendments to each, adopted and approved by the court.

(2)(A) Entries in this register shall be sequentially numbered in the order adopted and approved and shall be further designated by the year of adoption and approval.

(B) A separate sequential numbering system shall be maintained for both ordinances and resolutions.

(3) The register number shall be the official reference number designating an enactment.

(4) The register shall be maintained as a permanent record of the court and shall contain, in addition to the sequential register number, the following items of information:

(A) An index number which shall be the originating legislative agenda number of the enactment;

(B) The comprehensive title of the enactment;

(C) The type of ordinance or amendment: general, emergency, appropriation, initiative, or referendum;

(D) The date adopted by the quorum court;

(E) The date approved by the county judge, date of veto override, or date enacted by the electors;

(F) The effective date of the enactment;

(G) The expiration date of the enactment; and

(H) A recording index number designating the location of the enactments.

(c)(1)(A) PERMANENT RECORD OF ORDINANCES AND RESOLUTIONS. There shall be maintained a permanent record of all ordinances and resolutions in which each enactment is entered in full after passage and approval, except when a code or budget is adopted by reference.

(B) When a code or budget is adopted by reference, the date and source of the code shall be entered.

(2)(A) The permanent record shall be so indexed to provide for efficient identification, location, and retrieval of all ordinances and resolutions by subject, register number, and date enacted.

(B) The permanent record indexing may be by book and page.

(d) CODIFICATION OF ORDINANCES. No later than 1980 and at five-year intervals thereafter, all county ordinances enacted in each of the several counties shall be compiled into a uniform code and published.

History. Acts 1977, No. 742, § 96;
A.S.A. 1947, § 17-4013.

14-14-904. Procedures generally.

(a) TIME AND PLACE OF QUORUM COURT ASSEMBLY. The justices of the peace elected in each county shall assemble and organize as a county quorum court body on the first Monday, excepting holidays, after the beginning of the justices' term in office. Thereafter, the justices shall assemble each calendar month in their respective counties to perform the duties of a quorum court, except that more frequent meetings may be required by ordinance. The time and place of the initial assembly of justices shall be designated by written notice of the county judge. The justices,

thereafter, shall meet as a quorum court at a regular time and place established by ordinance.

(b)(1) The quorum court, at its regular meeting in November of each year shall levy the county, municipal and school taxes for the current year, and before the end of each fiscal year, the court shall make appropriations for the expenses of county government for the following year. The Director of the Assessment Coordination Division of the Public Service Commission may authorize an extension of the date for levy of taxes of up to sixty (60) days upon application by the county judge and county clerk of any county for good cause shown resulting from reappraisal or rollback of taxes.

(2) Nothing in this subsection, shall prohibit the quorum court from making appropriation amendments at any time during the current fiscal year.

(3) If the levy of taxes is repealed by referendum, the county may adopt a new ordinance levying taxes within thirty (30) days after the referendum vote is certified.

(c) SPECIAL MEETINGS OF QUORUM COURT. The county judge or a majority of the elected justices may call a special meeting of the quorum court upon at least twenty-four (24) hours' notice in such manner as may be prescribed by local ordinance. In the absence of procedural rules, the county judge or a majority of the elected justices may call a special meeting of the quorum court upon written notification of all members not less than two (2) calendar days prior to the calendar day fixed for the time of the meeting. The notice of special meeting shall specify the subjects, date, time, and designated location of the special meeting.

(d) PRESIDING OFFICER. The county judge shall preside over the quorum court without a vote but with the power of veto. In the absence of the county judge, a quorum of the justices by majority vote shall elect one (1) of their number to preside but without the power to veto. The presiding officer shall appoint all regular and special committees of a quorum court, subject to any procedural rules which may be adopted by ordinance.

(e) PROCEDURAL RULES AND ATTENDANCE OF MEETINGS. Except as otherwise provided by law, the quorum court of each county shall determine its rules of procedure and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance.

(f) QUORUM. A majority of the whole number of justices comprising a quorum court shall constitute a quorum and is necessary to conduct any legislative affairs of the county.

(g) LEGISLATIVE AFFAIRS. All legislative affairs of a quorum court shall be conducted through the passage of ordinances, resolutions, or motions.

(h) MAJORITY VOTE REQUIRED. All legislative actions of a quorum court, excluding the adoption of a motion, shall require a majority vote of the whole number of justices comprising a quorum court unless otherwise provided by the Arkansas Constitution or by law. A motion shall require

a majority vote of the whole number of justices comprising a quorum for passage.

(i) **COUNTY ORDINANCE.** A county ordinance is defined as an enactment of compulsory law for a quorum court which defines and establishes the permanent or temporary organization and system of principles of a county government for the control and conduct of county affairs.

(j) **COUNTY RESOLUTION.** A county resolution is defined as the adoption of a formal statement of policy by a quorum court, the subject matter of which would not properly constitute an ordinance. A resolution may be used whenever the quorum court wishes merely to express an opinion as to some matter of county affairs, and a resolution shall not serve to compel any executive action.

(k) **MOTION.** A motion is defined as a proposal to take certain action or an expression of views held by the quorum court body. As such, a motion is merely a parliamentary procedure which precedes the adoption of resolutions or ordinances. Motions shall not serve to compel any executive action unless such action is provided for by a previously adopted ordinance or state law.

(l) **ORDINANCES.** Ordinances may be amended and repealed only by ordinances.

(m) **RESOLUTIONS.** Resolutions may be amended and repealed only by resolutions.

(n) **INITIATIVE AND REFERENDUM.** All ordinances shall be subject to initiative and referendum as provided for through Arkansas Constitution, Amendment 7.

History. Acts 1977, No. 742, § 85; 1979, No. 413, § 21; A.S.A. 1947, § 17-4002; Acts 1991, No. 406, § 1; 1997, No. 1300, § 24.

A.C.R.C. Notes. The format of the 1997 amendment of this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the formatting.

The 1997 amendment to this section contains grammatical or stylistic errors. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the language.

The Assessment Coordination Division of the Public Service Commission is transferred by a Type 2 transfer as provided in § 25-2-105 to the Assessment Coordination Department pursuant to § 25-28-102(a).

Amendments. The 1997 amendment deleted the subsection heading in (b); and added the last sentence in (b)(1).

Cross References. Limitation on counties — Tax levies, § 26-25-101.

Taxation generally, § 26-73-101 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

CASE NOTES

ANALYSIS

Ratification.
Special meetings.
Taxes and appropriations.
Time and place.

Ratification.

Even if the county judge had merely acted as the agent of the county in making an order laying out the highway right-of-way and fixing the width of the right-of-way on each side of the centerline, still the county court adopted and ratified the order by paying out county money arising for right-of-way claims because of the order. *Bollinger v. Arkansas State Hwy. Comm'n*, 229 Ark. 53, 315 S.W.2d 889 (1958), *aff'd*, 230 Ark. 877, 327 S.W.2d 381 (1959) (decision under prior law).

Special Meetings.

Where a county's lease on a building used as a courthouse had expired and the rentals to be paid for a building used as a courthouse would in a few years amount to enough to build a courthouse, an emergency existed justifying a special session of the quorum court for the purpose of considering and voting an appropriation for the construction of a courthouse. *Kleiner v. Parker*, 177 Ark. 671, 8 S.W.2d 434 (1928) (decision under prior law).

Taxes and Appropriations.

Taxes must have been appropriated to the purpose for which collected. *Lee County v. Phillips County*, 46 Ark. 156 (1885) (decision under prior law).

Taxation for county purposes has to be uniform throughout the county; the levying court cannot provide for a dual system. *Hutchinson v. Ozark Land Co.*, 57 Ark. 554, 22 S.W. 173 (1893) (decision under prior law).

A county tax levy will not be invalid on collateral attack because the levying court appropriated an amount in excess of the limits set in § 14-20-103, in the absence of any affirmative showing that the county had no funds derived from any other sources. *Fussell v. Mallory*, 97 Ark. 465, 134 S.W. 631 (1911) (decision under prior law).

Whether the county levying court levied a school tax in a certain district had to be determined by the records of that court

and not by the depositions of the officers who composed the court. *Alexander v. Capps*, 100 Ark. 488, 140 S.W. 722 (1911) (decision under prior law).

Where quorum court failed to show a designation of the amount of the school levy in any school district by figures alone or otherwise, and it was impossible to determine from an examination of the record the amount of the millage sought to be levied, the levy made was void. *Tyer v. Hazel*, 212 Ark. 140, 205 S.W.2d 18 (1947) (decision under prior law).

There is no provision in law allowing a quorum court to turn over to the county judge a sum of money "to use as he sees fit and deems necessary," and such an appropriation is invalid. *Martin v. Bratton*, 223 Ark. 159, 264 S.W.2d 635 (1954) (decision under prior law).

Quorum court has power and duty to determine and levy millages for county purposes only. *Layne v. Strode*, 229 Ark. 513, 317 S.W.2d 6 (1958) (decision under prior law).

In action involving the ad valorem assessment of real property where assessor, after making up his assessment books and an abstract of the assessed property, filed claim with the county clerk, who made out his report in accordance with the assessor's abstract, forwarding the report to the state, during which time the county board of equalization was in session, the action of the quorum court directing taxes be collected from the value established by the assessor was void, since the court was without authority to levy millages on any basis other than the assessment of the assessor, as were equalized and adjusted by the equalization board. *Layne v. Strode*, 229 Ark. 513, 317 S.W.2d 6 (1958) (decision under prior law).

There is no provision in the Arkansas Constitution or the statutes which gives a county court the specific authority to pay dues to a county judges association. *Arkansas Ass'n of County Judges v. Green*, 232 Ark. 438, 338 S.W.2d 672 (1960) (decision under prior law).

Time and Place.

A quorum court was lawfully in session on giving notice of the session in any manner to justices of the peace affected. *Cleveland County v. Pearce*, 171 Ark.

1145, 287 S.W. 593 (1926) (decision under prior law). **Cited:** Horton v. Taylor, 585 F. Supp. 224 (W.D. Ark. 1984).

14-14-905. Adoption and amendment of ordinances generally.

(a) **INTRODUCTION OF ORDINANCES AND AMENDMENTS TO EXISTING ORDINANCES.** A county ordinance or amendment to an ordinance may be introduced only by a justice of the peace of the county or through the provisions of initiative and referendum pursuant to Arkansas Constitution, Amendment 7.

(b) **STYLE REQUIREMENTS. (1) GENERALLY.** No ordinance or amendment to an existing ordinance passed by a county quorum court shall contain more than one (1) comprehensive topic and shall be styled "Be It Enacted by the Quorum Court of the County of, State of Arkansas; an Ordinance to be Entitled:". Each ordinance shall contain this comprehensive title, and the body of the ordinance shall be divided into articles, sequentially numbered, each expressing a single general topic related to the single comprehensive topic.

(2) **AMENDMENT TO EXISTING ORDINANCES.** No county ordinance shall be revised or amended, or the provisions thereof extended or conferred, by reference to its title only, but so much thereof as is revised, amended, extended, or conferred shall be reenacted and published at length.

(c) **PASSAGE.** On the passage of every ordinance or amendment to an existing ordinance, the yeas and nays shall be called and recorded. A concurrence by a majority of the whole number of members elected to the quorum court shall be required to pass any ordinance or amendment. All ordinances or amendments to existing ordinances of a general or permanent nature shall be fully and distinctly read on three (3) different days unless two-thirds ($\frac{2}{3}$) of the members composing the court shall dispense with the rule. This subsection shall not serve to restrict the passage of emergency, appropriation, initiative, or referendum measures in a single meeting as provided by law.

(d) **APPROVAL AND PUBLICATION.** Upon passage, all ordinances or amendments shall be approved by the county judge within seven (7) days, unless vetoed, and shall become law without his signature if not signed within seven (7) days. The ordinances or amendments shall then be published by the county clerk as prescribed by law. Approval by the county judge shall be demonstrated by affixing his signature and his notation of the date signed on the face of an original copy of the proposed ordinance. This approval and authentication shall apply to all ordinances or amendments to existing ordinances unless the power of veto is invoked.

(e) **EFFECTIVE DATE.** No ordinance or amendment to existing ordinances other than an emergency ordinance or appropriation ordinance shall be effective until thirty (30) calendar days after publication has appeared. An ordinance or amendment to an existing ordinance may provide for a delayed effective date or may provide for the ordinance or amendment to an existing ordinance to become effective upon the fulfillment of an indicated contingency.

(f) **REFERENCE TO ELECTORS. GENERALLY.** A quorum court may, at the time of or within thirty (30) days of adoption and prior to the effective date of an ordinance, refer the ordinance to the electors for their acceptance or rejection. The referral shall be in the form of a resolution and shall require a three-fifths ($\frac{3}{5}$) affirmative vote of the whole number of justices comprising a quorum court. This action by a court shall not be subject to veto and shall constitute a referendum measure; from that point, the procedure of election shall be as required by Arkansas Constitution, Amendment 7 and by law.

(2) **MANNER AND PROCEDURE.** Any ordinance enacted by the governing body of any county in the state may be referred to a vote of the electors of the county for approval or rejection in the manner and procedure prescribed in Arkansas Constitution, Amendment 7, and laws enacted pursuant thereto, for exercising the local initiative and referendum. The manner and procedure prescribed therein shall be the exclusive method of exercising the initiative and referendum regarding these local measures.

History. Acts 1977, No. 742, § 86; 1981, No. 220, § 1; A.S.A. 1947, §§ 17-4003, 17-4003.1.

CASE NOTES

ANALYSIS

Construction.
Passage.
Style requirements.

Construction.

Subdivision (f)(2) did not repeal § 14-14-915(b)(2), but specifically preserved all previously enacted enabling legislation, including § 14-14-915(b)(2). *Cox v. French*, 277 Ark. 134, 640 S.W.2d 786 (1982).

Passage.

Law requiring the clerk to keep a record of the proceedings and to enter the name and the yea and nay votes of those voting on propositions to levy tax or to appropriate money was mandatory. *Blakemore v. Brown*, 142 Ark. 293, 219 S.W. 311 (1920) (decision under prior law).

Clerk's failure to keep record of voting on proposition to levy taxes, for nonpayment of which realty was subsequently sold, was a mere omission of an officer to do a positive duty required by statute and

could be cured by curative statute. *Kansas City Life Ins. Co. v. Moss*, 196 Ark. 553, 118 S.W.2d 873 (1938) (decision under prior law).

After confirmation of the state's title to tax-forfeited land under former §§ 26-38-108 — 26-38-118, it was too late to object to the validity of the tax sale on the ground that the record of the quorum court did not show the vote or the names of the justices voting for the motion levying the tax. *Nichols v. Kesselberg*, 211 Ark. 673, 201 S.W.2d 997 (1947) (decision under prior law).

Style Requirements.

Where an ordinance contains the word "ordained" rather than the statutorily prescribed word "enacted," the ordinance is not void. *Henderson v. Russell*, 267 Ark. 140, 589 S.W.2d 565 (1979).

Cited: *Foster v. Jefferson County Quorum Court*, 321 Ark. 105, 901 S.W.2d 809 (1995); *Massongill v. County of Scott*, 329 Ark. 98, — S.W.2d — (1997).

14-14-906. Penalties for violation of ordinances.

(a)(1)(A) **AUTHORITY TO ESTABLISH.** A county quorum court may fix penalties for the violation of any ordinance, and these penalties may be enforced by the imposition of fines, forfeitures, and penalties on any person offending against or violating the ordinance.

(B) The fine, forfeiture, or penalty shall be prescribed in each particular ordinance or in an ordinance prescribing fines, forfeitures, and penalties in general.

(2)(A) A quorum court shall have power to provide, by ordinance, for the prosecution, recovery, and collection of the fines, forfeitures, and penalties.

(B)(i) A quorum court shall not have power to define an offense as a felony or to impose any fine or penalty in excess of five hundred dollars (\$500) for any one (1) specified offense or violation, or double that sum for each repetition of the offense or violation.

(ii) If an act prohibited or rendered unlawful is, in its nature, continuous in respect to time, the fine or penalty for allowing the continuance thereof, in violation of the ordinance, shall not exceed two hundred fifty dollars (\$250) for each day that it may be unlawfully continued.

(b) **DISPOSITION.** All fines and penalties imposed for violation of any county ordinance shall be paid into the county general fund.

History. Acts 1977, No. 742, § 95;
A.S.A. 1947, § 17-4012.

14-14-907. Appropriation ordinances.

(a)(1) **GENERALLY.** An appropriation ordinance or amendment to an appropriation ordinance is defined as a measure by which the county quorum court designates a particular fund, or sets apart a specific portion of county revenue in the treasury, to be applied to some general object of expenditure or to some individual purchase or expense of the county.

(2) An appropriation ordinance or amendment to an existing appropriation ordinance may be introduced in the manner provided by law for the introduction of ordinances.

(3) Appropriation measures enacted by a quorum court shall include the following categories of financial management:

(A) The levy of taxes and special property tax assessments as provided by law;

(B) The enactment of specific appropriations by which a specified sum has been set apart in the treasury and devoted to the payment of a particular demand. Specific appropriations may be enacted through the adoption of an annual budget, a statement of estimated receipts and expenditures, in a manner prescribed by law.

(b) **ADOPTION AND AMENDMENT BY REFERENCE.** Any quorum court may adopt, amend, or repeal an appropriation ordinance which incorporates by reference the provisions of any county budget or portion of a county

budget, or any amendment thereof, properly identified as to date and source, without setting forth the provisions of the adopted budget in full. At least one (1) copy of a budget, portion, or amendment which is incorporated or adopted by reference shall be filed in the office of the county clerk and there kept available for public use, inspection, and examination.

(c) **DESIGNATION.** All appropriation ordinances or an amendment to an appropriation ordinance shall be designated "appropriation ordinance."

(d) **READINGS AND PUBLICATION.** An appropriation ordinance may be enacted without separate readings or publication prior to passage. However, publication shall be initiated within two (2) calendar days, excepting holidays, after approval of the measure by the county judge.

(e) **VOTING REQUIREMENTS.** The passage of appropriation ordinances or amendments to existing appropriation ordinances enacted without separate readings shall require a two-thirds ($\frac{2}{3}$) vote of the whole number of justices comprising a quorum court. On the passage of every appropriations measure, the yeas and nays shall be called and recorded in the minutes of the meeting.

(f) **EFFECTIVE DATE.** An appropriation measure is effective immediately upon passage by the quorum court and approval by the county judge.

History. Acts 1977, No. 742, § 87; A.S.A. 1947, § 17-4004.

Cross References. Appropriations to be specific — Limitations, § 14-20-103.

Political subdivisions not to become stockholders in or lend credit to private corporations, Ark. Const., Art. 12, § 5.

CASE NOTES

ANALYSIS

Appropriation measures.
Voting requirements.

Appropriation Measures.

County ordinance was not labeled or designated an appropriation measure because it was not one as defined by this section. *Massongill v. County of Scott*, 329 Ark. 98, — S.W.2d — (1997).

Voting Requirements.

Where the record showed a unanimous vote for all appropriations, it was unnecessary to show the yeas and nays; record need not be signed. *Hilliard v. Bunker*, 68 Ark. 340, 58 S.W. 362 (1900) (decision under prior law).

14-14-908. Emergency ordinances or amendments.

(a) **GENERALLY.** An emergency ordinance or emergency amendments to existing ordinances may be introduced in the manner provided by law for the introduction of ordinances. An emergency ordinance may be enacted only to meet public emergencies affecting life, health, safety, or the property of people.

(b) **LIMITATIONS.** An emergency ordinance or amendment shall not levy taxes, impose special property tax assessments, impose or change a service rate, or be enacted on any franchise or special privilege creating any vested right or interest or alienating any property. Every extension,

enlargement, grant, or conveyance of franchise or any rights, property, easements, lease, or occupation of, or in, any road, street, alley, or any part thereof in real property or interest in real property owned by a county government exceeding in value three hundred dollars (\$300), whether it be by ordinance or otherwise, shall be subject to referendum and shall not be subject to emergency enactment.

(c) **DECLARATION OF EMERGENCY.** An emergency ordinance must contain a declaration that an emergency exists and define the emergency. All emergency ordinances shall be designated "emergency ordinance."

(d) **READINGS AND PUBLICATION.** An emergency measure does not require separate readings or publication prior to passage. However, publication shall be initiated within seven (7) calendar days, excepting holidays, after approval of the emergency measure by the county judge.

(e) **VOTING REQUIREMENTS.** The passage of emergency ordinances or emergency amendments to existing ordinances shall require a two-thirds ($\frac{2}{3}$) vote of the whole number of justices comprising a quorum court. On the passage of every emergency measure, the yeas and nays shall be called and recorded in the minutes of the meeting.

(f) **EFFECTIVE DATE.** An emergency ordinance or emergency amendment to an existing ordinance is effective immediately upon passage by the quorum court and approval by the county judge.

History. Acts 1977, No. 742, § 88; 1979, No. 413, § 22; A.S.A. 1947, § 17-4005.

CASE NOTES

ANALYSIS

Enacting clause.

Ordinance held invalid.

Ordinance held valid.

Readings and publication.

Enacting Clause.

Where an ordinance contains the word "ordained" rather than the statutorily prescribed word "enacted," the ordinance is not void. *Henderson v. Russell*, 267 Ark. 140, 589 S.W.2d 565 (1979).

Ordinance Held Invalid.

Emergency clause in municipal ordinance containing no statement to show that some unforeseen occurrence caused the existing ordinance for special meetings to be injurious to life, health, or safety, was invalid. *Burroughs v. Ingram*, 319 Ark. 530, 893 S.W.2d 319 (1995).

Ordinance Held Valid.

Emergency ordinance allowing county to open and close graves without charge,

complied with this section and was not clearly and unmistakably in violation of the state or federal constitutions. *Thruston v. Little River County*, 310 Ark. 188, 832 S.W.2d 851 (1992).

Ordinance calling for an election to submit one cent sales and use tax to voters did not violate this section because the ordinance did not itself levy a tax but was merely the first step in a process authorized by § 26-74-201 for the collection of the tax. *Sanders v. County of Sebastian*, 324 Ark. 433, 922 S.W.2d 334 (1996).

Readings and Publication.

Where the approval of an ordinance was on Thursday, and it was published in the next issue of the local weekly newspaper on Monday, with Saturday and Sunday excepted, the publication was at least initiated within two (now seven) days as contemplated by subsection (d). *Henderson v. Russell*, 267 Ark. 140, 589 S.W.2d 565 (1979) (decision prior to 1979 amendment).

14-14-909. Incorporation by reference.

(a) For the purpose of this section, "code" means any published compilation of rules which has been prepared by various technical trade associations, model code organizations, federal agencies, or this state, or any agency thereof, and shall include specifically, but shall not be limited to, building codes, plumbing codes, electrical wiring codes, health or sanitation codes, together with any other code which embraces rules pertinent to a subject which is a proper local county affair.

(b) Any county quorum court may adopt or repeal an ordinance that incorporates by reference the provisions of any code, or portions of any code, or any amendment thereof, properly identified as to date and source, without setting forth the provisions of the code in full. Notice of the intent to adopt a code by reference shall be published after the second reading and prior to final adoption of the code. At least one (1) copy of the code, portion, or amendment which is incorporated or adopted by reference shall be filed in the office of the county clerk and there kept available for public use, inspection, and examination. The filing requirements prescribed in this subsection shall not be considered to be complied with unless the required copies of the codes, portion, amendment, or public record are filed with the county clerk for a period of thirty (30) days prior to final adoption of the ordinance which incorporates the code, portion, or amendment by reference.

(c) The quorum court may adopt or amend a code by reference by an emergency ordinance and without notice.

(d) The process for repealing an ordinance which adopted or amended a code by reference shall be the same as for repealing any other ordinance.

(e) Any ordinance adopting a code, portion, or amendment by reference shall state the penalty for violating the code, portion, or amendment, or any provision thereof, separately, and no part of any penalty shall be incorporated by reference.

History. Acts 1977, No. 742, § 89; 1979, No. 413, § 23; A.S.A. 1947, § 17-4006.

14-14-910. Interlocal agreements.

(a) **GENERALLY.** The county court of each county may contract, cooperate, or join with any one (1) or more other governments or public agencies, including any other county, or with any political subdivisions of the state or any other states, or their political subdivisions, or with the United States to perform any administrative service, activity, or undertaking which any contracting party is authorized by law to perform.

(b)(1) **DEFINITIONS.** "County interlocal agreement" means any service contract entered into by the county court which establishes a permanent or perpetual relationship thereby obligating the financial resources of a county. Grant-in-aid agreements enacted through an

appropriation ordinance shall not be considered an interlocal agreement.

(2) "Permanent or perpetual relationship" means for purposes of this section any agreement exhibiting an effective duration greater than one (1) year, twelve (12) calendar months, or an agreement exhibiting no fixed duration but where the apparent intent of the agreement is to establish a permanent or perpetual relationship. Such interlocal agreements shall be authorized by ordinance of the quorum court. Any interlocal agreement enacted by ordinance may provide for the county to:

(A) Cooperate in the exercise of any function, power, or responsibility;

(B) Share the services of any officer, department, board, employee, or facility; and

(C) Transfer or delegate any function, power, responsibility, or duty.

(c) CONTENTS. An interlocal agreement shall:

(1) Be authorized and approved by the governing body of each party to the agreement;

(2) Set forth fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties; and

(3) Specify the following:

(A) Its duration;

(B) The precise organization, composition, and nature of any separate legal entity created;

(C) The purposes of the interlocal agreement;

(D) The manner of financing the joint or cooperative undertaking and establishing and maintaining a budget;

(E) The permissible methods to be employed in accomplishing the partial or complete termination of an agreement and for disposing of property upon partial or complete termination. The methods for termination shall include a requirement of six (6) months written notification of the intent to withdraw by the governing body of the public agency wishing to withdraw;

(F) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking including representation of the contracting parties on the joint board;

(G) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking; and

(H) Any other necessary and proper matters.

(d) SUBMISSION TO LEGAL COUNSEL. Every agreement made shall, prior to and as a condition precedent to its final adoption and performance, be submitted to legal counsel who shall determine whether the agreement is in proper form and compatible with all applicable laws. The legal counsel shall approve any agreement submitted to him unless he finds it does not meet the conditions set forth in this section. Then he shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agree-

ment fails to meet the requirements of law. Failure to disapprove an agreement within thirty (30) days of its submission shall constitute approval.

(e) **SUBMISSION TO ATTORNEY GENERAL.** Every agreement including a state or a state agency shall, prior to and as a condition precedent to its final adoption and performance, be submitted to the Attorney General who shall determine whether the agreement is in proper form and compatible with the laws of the State of Arkansas. The Attorney General shall approve any agreement submitted to him unless he finds it does not meet the conditions set forth in this section. Then he shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement within thirty (30) days of its submission shall constitute approval.

History. Acts 1977, No. 742, § 90; A.S.A. 1947, § 17-4007.

A.C.R.C. Notes. Former subsection (6) of this section provided that, effective February 1, 1978, all interlocal agreements subject to the provisions of this section

should be reenacted or terminated by ordinance of the county quorum court and provided that no termination should impair the obligation of contract unless agreed to by the parties involved.

CASE NOTES

Cited: *Mears v. Hall*, 263 Ark. 827, 569 S.W.2d 91 (1978).

14-14-911. Veto of ordinances or amendments.

(a) **AUTHORITY TO VETO.** The county judge of each county shall preside over the county quorum court with the power of veto.

(b) **LIMITATIONS OF VETO.** The power of veto shall be limited to the total text of an ordinance or amendment to an existing ordinance, and this veto power shall not be construed to permit the veto of any single part, section, or line item of any ordinance or amendment. The power of veto shall not apply to measures enacted through the provisions of initiative and referendum.

(c) **TIME LIMITATIONS FOR VETO.** The veto of any ordinance of a general or permanent nature must be exercised within seven (7) calendar days after passage by a quorum court.

(d) **PROCEDURE AND AUTHENTICATION OF VETO.** The veto of any ordinance or amendment of a general or permanent nature shall be authenticated by the county judge and shall be demonstrated by the filing of a written statement of the reasons of veto with the county clerk.

(e) **NOTIFICATION OF VETO.** Upon filing of the written notification of veto by the county judge, the county clerk shall immediately provide written notification to each member of the quorum court and provide each member with a copy of the veto statement filed by the judge.

(f) **SUSPENSION OF FORCE.** No ordinance vetoed shall have any force or validity unless, at the next regular meeting after the filing of the veto

statement, the quorum court shall exercise their power to override a veto pursuant to Arkansas Constitution, Amendment 55, § 4.

History. Acts 1977, No. 742, § 91;
A.S.A. 1947, § 17-4008.

14-14-912. Veto override.

(a) **POWER OF VETO OVERRIDE.** The quorum court of each county shall have the power to override the veto of the county judge.

(b) **VOTE REQUIRED.** An affirmative vote of three-fifths ($\frac{3}{5}$) of the total membership of a quorum court shall be required to override the veto of any ordinance or amendment to an existing ordinance. On the consideration of a veto override by a court, the yeas and nays shall be called and recorded in the minutes of the meeting.

(c) **TIME OF VETO OVERRIDE.** A quorum court shall exercise the power of veto override over permanent and temporary ordinances at the next regular session of the court following the written notification of veto. Failure to override a veto in a single vote of the court shall constitute a confirmation of veto by a court, and no further consideration of veto override on the measure shall be introduced in subsequent sessions of the court. However, any ordinance or amendment so vetoed and confirmed by failure to override the veto may be reintroduced in the manner prescribed by law for the introduction of ordinances and amendments to ordinances.

History. Acts 1977, No. 742, § 92;
A.S.A. 1947, § 17-4009.

14-14-913. Adoption and amendment of resolutions.

(a) A county resolution or amendment to a resolution may be introduced only by a justice of the peace of the county.

(b) No resolution or amendment to a resolution passed by a county quorum court shall contain more than one (1) comprehensive topic and shall be styled "Be It Resolved by the Quorum Court of the County of, State of Arkansas That:".

(c) No county resolution shall be revised or amended, or the provisions thereof extended or conferred, by references to its title only, but so much thereof as is revised, amended, extended, or conferred shall be reenacted and published at length.

(d) A proposed resolution must be read and adopted by a majority vote of the whole number of justices comprising a quorum court. On the passage of every resolution or amendment to an existing resolution, the yeas and nays shall be called and recorded in the minutes of the meeting.

(e) Resolutions or an amendment to an existing resolution may be introduced and adopted in a single meeting of the quorum court.

(f) Upon passage, all resolutions or amendments to existing resolutions shall be entered into the records of the quorum court. Publication

of resolutions shall not be required except where publication is specified in the resolution adopted by a court.

(g) All resolutions shall be immediately effective unless a delayed effective date is specified.

(h) The power of veto shall not apply to the adoption of resolutions or amendments to resolutions.

History. Acts 1977, No. 742, § 93;
A.S.A. 1947, § 17-4010.

14-14-914. Initiative and referendum generally.

(a) COUNTY LEGISLATIVE POWERS RESERVED. The powers of initiative and referendum are reserved to the electors of each county government pursuant to Arkansas Constitution, Amendment 7.

(b) RESTRICTIONS. No county legislative measure shall be enacted contrary to the Arkansas Constitution or any general state law which operates uniformly throughout the state, and any general law of the state shall have the effect of repealing any county ordinance which is in conflict therewith. All ordinances adopted by the county quorum court providing for alternative county organizations and all proposed reorganizations of county government that may be proposed by initiative petition of electors of the county under Arkansas Constitution, Amendment 7 shall be submitted to the electors of the county only at the next following general election. However, such referendum shall be subject to initiative petition.

(c) PETITION BY ELECTORS. The qualified electors of each county may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition if signed by not less than fifteen percent (15%) of the qualified electors voting in the last general election for the office of circuit clerk, or the office of Governor where the electors have abolished the office of circuit clerk.

(d) SUSPENSION OF FORCE. (1) GENERAL ORDINANCE. A referendum petition on a general ordinance, or any part thereof, shall delay the effective date on such part included in the petition until the ordinance is ratified by the electors. However, the filing of a referendum petition against one (1) or more items, sections, or parts of any ordinance shall not delay the remainder from becoming operative.

(2) EMERGENCY ORDINANCE. A referendum petition on an emergency ordinance shall not suspend the force of the law, but the measure may be law until it is voted upon by the electors.

History. Acts 1977, No. 742, § 94;
1979, No. 413, § 24; A.S.A. 1947, § 17-4011.

RESEARCH REFERENCES

UALR L.J. Heller and Sallings, Survey of Public Law, 3 UALR L.J. 296.

CASE NOTES

Legislative Powers.

Where provisions of optional general stock law were never put in force in county, an initiated stock law covering the county was valid. *Smith v. Plant*, 179 Ark. 1024, 19 S.W.2d 1022 (1929) (decision under prior law).

The qualified electors of any particular county may enact salary laws applicable to that particular county. *Dozier v. Ragsdale*, 186 Ark. 654, 55 S.W.2d 779 (1932); *Reeves v. Smith*, 190 Ark. 213, 78 S.W.2d 72 (1935); *Tindall v. Searan*, 192

Ark. 173, 90 S.W.2d 476 (1936); *Phillips v. Rothrock*, 194 Ark. 945, 110 S.W.2d 26 (1937) (decisions under prior law).

Neither this section nor Ark. Const. Amend. 7, nor any other state law prohibits the voters of a county from using their right of initiative to call for a referendum whereby the people of the county can express their approval or disapproval of the quorum court's action in leasing a county owned hospital. *Proctor v. Hammons*, 277 Ark. 247, 640 S.W.2d 800 (1982).

14-14-915. Initiative and referendum requirements.

(a) **STYLE REQUIREMENTS OF PETITIONS.** A petition for county initiative or referendum filed by the electors shall:

(1) Embrace only a single comprehensive topic and shall be styled and circulated for signatures in the manner prescribed for county ordinances and amendments to ordinances established in this section and § 7-9-101 seq.;

(2) Set out fully in writing the ordinance sought by petitioners; or in the case of an amendment, set out fully in writing the ordinance sought to be amended and the proposed amendment; or in the case of referendum, set out the ordinance, or parts thereof, sought to be repealed; and

(3) Contain a written certification of legal review by an attorney at law duly registered and licensed to practice in the State of Arkansas. This legal review shall be conducted for the purpose of form, proper title, legality, constitutionality, and conflict with existing ordinances. Legal review shall be concluded prior to the circulations of the petition for signatures. No change shall be made in the text of any initiative or referendum petition measure after any or all signatures have been obtained.

(b) **TIME REQUIREMENTS FOR FILING PETITIONS.** (1) **INITIATIVE PETITIONS.** All petitions for initiated county measures shall be filed with the county clerk not less than sixty (60) calendar days nor more than ninety (90) calendar days prior to the date established for the next regular election.

(2) **REFERENDUM PETITIONS.** All petitions for referendum on county measures must be filed with the county clerk within sixty (60) calendar days after passage and publication of the measure sought to be repealed.

(3) **CERTIFICATION.** All initiative and referendum petitions must be certified sufficient to the county board of election commissioners not

less than forty (40) calendar days prior to a regular general election to be included on the ballot. If the adequacy of a petition is determined by the county clerk less than forty (40) days prior to the next regular election, the election on the measure shall be delayed until the following regular election unless a special election is called on a referendum measure as provided by law.

(c) **FILING OF PETITIONS.** Initiative and referendum petitions ordering the submission of county ordinances or measures to the electors shall be directed to, and filed with, the county clerk.

(d) **SUFFICIENCY OF PETITION.** Within ten (10) days after the filing of any petition, the county clerk shall examine and ascertain its sufficiency. Where the petition contains evidence of forgery, perpetuated either by the circulator or with his connivance, or evidence that a person has signed a name other than his own to the petition, the prima facie verity of the circulator's affidavit shall be nullified and disregarded, and the burden of proof shall be upon the sponsors of petitions to establish the genuineness of each signature. If the petition is found sufficient, the clerk shall immediately certify such finding to the county board of election commissioners and the quorum court.

(e) **INSUFFICIENCY OF PETITION AND RECERTIFICATION.** If the county clerk finds the petition insufficient, the clerk shall, within ten (10) days after the filing thereof, notify the petitioners or their designated agent or attorney of record, in writing, setting forth in detail every reason for the findings of insufficiency. Upon notification of insufficiency of petition, the petitioners shall be afforded ten (10) calendar days, exclusive of the day notice of insufficiency is receipted, in which to solicit and add additional signatures, or to submit proof tending to show that signatures rejected by the county clerk are correct and should be counted. Upon resubmission of a petition which was previously declared insufficient, the county clerk shall, within five (5) calendar days, recertify its sufficiency or insufficiency in the same manner as prescribed in this section and, thereupon, the clerk's jurisdiction as to the sufficiency of the petition shall cease.

(f) **APPEAL OF SUFFICIENCY OR INSUFFICIENCY FINDINGS.** Any taxpayer aggrieved by the action of the clerk in certifying the sufficiency or insufficiency of any initiative or referendum petition, may within fifteen (15) calendar days, but not thereafter, may file a petition in chancery court for a review of the findings.

History. Acts 1977, No. 742, § 94; 1979, No. 891, § 1; A.S.A. 1947, § 17-4011.

RESEARCH REFERENCES

UALR L.J. Heller and Sallings, Survey of Public Law, 3 UALR L.J. 296.

CASE NOTES

ANALYSIS

Constitutionality.

Filing.

Sufficiency of petition.

Time requirements.

Constitutionality.

The 15-day time limit in subsection (f) of this section is not unconstitutional in violation of Ark. Const. Amend. 7. Committee for Util. Trimming, Inc. v. Hamilton, 290 Ark. 283, 718 S.W.2d 933 (1986).

Filing.

Procedural deficiencies by county clerk on proper filing of petition held not fatal when there is yet time in which the clerk may correct such deficiencies. Brown v. Davis, 226 Ark. 843, 294 S.W.2d 481 (1956) (decision under prior law).

Sufficiency of Petition.

One affidavit to each petition consisting of many pages was held sufficient. Blocker v. Sewell, 189 Ark. 924, 75 S.W.2d 658 (1934) (decision under prior law).

Where evidence is satisfactory that names appearing on initiative petitions are not, prima facie, qualified electors, and no proof is offered to overcome this showing, the names will be stricken from the lists. Hargis v. Hall, 196 Ark. 878, 120 S.W.2d 335 (1938) (decision under prior law).

Evidence that names appearing on initiative petition were written in groups and in handwritings other than that of persons whose names were being used held sufficient to establish fraud, requiring the names be purged from lists. Hargis v. Hall, 196 Ark. 878, 120 S.W.2d 335 (1938) (decision under prior law).

If persons' names are signed by others to petition for the submission of a proposed initiated act to the voters, in the absence of wrongful intent or connivance between the signers and circulators of the petition, only those names wrongfully signed should be stricken. Sturdy v. Hall,

204 Ark. 785, 164 S.W.2d 884 (1942) (decision under prior law).

Where affidavits filed by circulators of petitions for an initiated measure were found to be false, the court was not wrong, as a matter of law, in excluding entirely the petitions of those affiants when the affiants merely said that they did not actually see all the persons sign in their presence. Parks v. Taylor, 283 Ark. 486, 678 S.W.2d 766 (1984).

Time Requirements.

Where filing dates of initiative petitions showed they were filed less than 60 days before election contrary to Arkansas Constitution, there could be no presumption that the public had notice of proceeding contemplated and required by the constitution, and there was, therefore, no authority for holding the election and, the election was a nullity. Phillips v. Rothrock, 194 Ark. 945, 110 S.W.2d 26 (1937) (decision under prior law).

Section 14-14-905(f)(2) did not repeal subdivision (b)(2), but specifically preserved all previously enacted enabling legislation, including subdivision (b)(2). Cox v. French, 277 Ark. 134, 640 S.W.2d 786 (1982).

Paragraph three of the local petitions part of Ark. Const. Amend. 7, which states that the time for filing referendum petitions is from 30 to 90 days from the passage of the county measure, is not self-executing, because it clearly anticipates that general laws may be enacted fixing a time for filing a referendum petition at a specific time between 30 and 90 days; therefore, where the General Assembly, by enacting subdivision (b)(2), fixed the time at 60 days, the General Assembly exercised its lawful power to enact enabling legislation. Cox v. French, 277 Ark. 134, 640 S.W.2d 786 (1982).

Cited: Henard v. St. Francis Election Comm., 301 Ark. 459, 784 S.W.2d 598 (1990); Lawson v. St. Francis County Election Comm'n, 309 Ark. 135, 827 S.W.2d 159 (1992).

14-14-916. Judicial jurisdiction over initiative and referendum.

(a) **JURISDICTION OF CHANCERY COURT.** Jurisdiction is vested upon the chancery courts and chancellors in vacation to hear and determine petitions for writs of mandamus, injunctions, and all other actions affecting the submission of any proposed county initiative or referendum petitions. All such proceedings and actions shall be heard summarily in term time or in vacation upon five (5) calendar days' notice in writing and shall have precedence over all other suits and matters before the court or chancellor. When any such action or proceeding is filed, if the court is not in session, it shall be the duty of the chancellor, by order made in vacation, to call a special term of the court to convene, within ten (10) calendar days after notice, to hear and determine the cause.

(b) **LIMITATION OF INJUNCTION OR STAY OF PROCEEDINGS.** No procedural steps in submitting an initiative or referendum measure shall be enjoined, stayed, or delayed by the order of any court or judge after the petition shall have been declared sufficient, except in chancery on petition to review as provided in this section. During the pendency of any proceeding to review, the findings of the county clerk shall be conclusive and binding and shall not be changed or modified by any temporary order or ruling, and no court or judge shall entertain jurisdiction of any action or proceeding questioning the validity of any such ordinance or measure until after it shall have been adopted by the people.

History. Acts 1977, No. 742, § 94;
A.S.A. 1947, § 17-4011.

RESEARCH REFERENCES

UALR L.J. Heller and Sallings, Survey
of Public Law, 3 UALR L.J. 296.

CASE NOTES**ANALYSIS**

Injunction.
Jurisdiction.

Injunction.

In suit to restrain enforcement of an initiative act and to have the act declared invalid, exhibits attached to motion to dissolve temporary restraining order, showing that jurisdictional requirements were met in respect of initiation of the act, showed prima facie the act was legally

adopted. *Sager v. Hibbard*, 203 Ark. 672, 158 S.W.2d 922 (1942) (decision under prior law).

Jurisdiction.

The only jurisdiction conferred upon chancery courts is to review action of county clerk in determining the sufficiency of petitions for local laws. *Hutto v. Rogers*, 191 Ark. 787, 88 S.W.2d 68 (1935) (decision under prior law).

Cited: *Moorman v. Priest*, 310 Ark. 525, 837 S.W.2d 886 (1992).

14-14-917. Initiative and referendum elections.

(a) **TIME OF ELECTION FOR INITIATIVE AND REFERENDUM MEASURES.** (1) **INITIATIVE.** Initiative petition measures shall be considered by the electors only at a regular general election at which state and county officers are elected for regular terms.

(2) **REFERENDUM.** Referendum petition measures may be submitted to the electors during a regular general election and shall be if the adequacy of the petition is determined within the time limitation prescribed in this section. A referendum measure may also be referred to the electors at a special election called for the expressed purpose proposed by petition. However, no referendum petition certified within the time limitations established for initiative measures shall be referred to a special election, but shall be voted upon at the next regular election.

(3) **CALLING SPECIAL ELECTIONS.** The jurisdiction to establish the necessity for a special election on referendum measures is vested in the electors through the provisions of petition. Where such jurisdiction is not exercised by the electors, the county court of each of the several counties may determine such necessity. However, a quorum court may compel the calling of a special election by a county court through resolution adopted during a regularly scheduled meeting of the quorum court. The resolution may specify a reasonable time limitation in which a county court order calling the special election shall be entered.

(4) **TIME OF SPECIAL ELECTION.** The county court shall fix the date for the conduct of any special elections on referendum measures. The date shall be not less than thirty (30) calendar days after the date of the order calling the election. However, where the electors exercise their powers to establish the necessity for a special election, the county court shall order an election not more than forty-five (45) calendar days after certification of sufficiency by the county clerk, nor less than thirty (30) calendar days after the date of the order calling the election.

(b) **CERTIFICATION REQUIREMENTS.** (1) **NUMERIC DESIGNATION OF INITIATIVE AND REFERENDUM MEASURES.** The county clerk shall, upon finding an initiative or referendum petition sufficient and prior to delivery of such certification to a board of election commissioners and quorum court, cause the measure to be entered into the legislative agenda register of the quorum court. This entry shall be in the order of the original filing of petition, and the register entry number shall be the official numeric designation of the proposed measure for election ballot purposes.

(2) **CERTIFICATION OF SUFFICIENCY.** The certification of sufficiency for initiative and referendum petitions transmitted by the county clerk to the county board of election commissioners and quorum court shall include the ballot title of the proposed measure, the legislative agenda registration number, and a copy of the proposed measure, omitting signatures. The ballot title certified to the board shall be the comprehensive title of the measure proposed by petition, and the delivery of the certification to the chairman or secretary of the board shall be

deemed sufficient notice to the members of the board and their successors.

(c) NOTICE OF ELECTION. (1) INITIATIVE PETITIONS. The county clerk shall, upon certification of any initiative or referendum petition measure submitted during the time limitations for a regular election, give notice, through publication by a two-time insertion, at not less than a seven-day interval, in a newspaper of general circulation in the county or as provided by law. Publication notice shall state that the measure will be submitted to the electors for adoption or rejection at the next regular election and shall include the full text, the ballot title, and the official numeric designation of the measure.

(2) REFERENDUM PETITION. The county clerk shall, upon certifying any referendum petition prior to the time limitations of filing measures established for a regular election, give notice through publication by a one-time insertion in a newspaper of general circulation in the county or as provided by law. Publication notice shall state that the measure will be submitted to the electors for adoption or rejection at the next regular election or a special election when ordered by the county court and shall include the full text, the ballot title, and the official numeric designation of the measure.

(3) PUBLICATION OF SPECIAL REFERENDUM ELECTION NOTICE. Upon filing of a special election order by the county court, the county clerk shall give notice of the election through publication by a two-time insertion, at not less than a seven-day interval, in a newspaper of general circulation in the county or as provided by law. Publication shall state that the measure will be submitted to the electors for adoption or rejection at a special election and shall include the full text, the date of the election, the ballot title, and official numeric designation of the measure.

(4) COSTS. The cost of all publication notices required in this section shall be paid out of the county general fund.

(d) BALLOT SPECIFICATIONS FOR INITIATIVE AND REFERENDUM MEASURES. Upon receipt of any initiative or referendum measure certified as sufficient by a county clerk, it shall be the duty of the members of the county board of election commissioners to take due cognizance and to certify the results of the vote cast thereon. The board shall cause the ballot title to be placed on the ballot to be used in the election, stating plainly and separately the title of the ordinance or measure so initiated or referred to the electors with these words:

FOR PROPOSED INITIATIVE (OR REFERRED) ORDINANCE (OR AMENDMENT)

NO.....

AGAINST PROPOSED INITIATIVE (OR REFERRED) ORDINANCE (OR AMENDMENT)

NO.....

so electors may vote upon such ordinance or measure. In arranging the ballot title on the ballot, the commissioners shall place it separate and apart from the ballot titles of the state acts, constitutional amendments, and the like. If the board of election commissioners fails or

refuses to submit a proposed initiative or referendum ordinance when it is properly petitioned and certified as sufficient, the qualified electors of the county may vote for or against the ordinance or measure by writing or stamping on their ballots the proposed ballot title, followed by the word “FOR” or “AGAINST,” and a majority of the votes so cast shall be sufficient to adopt or reject the proposed ordinance.

(e) **CONFLICTING MEASURES.** Where two (2) or more ordinances or measures shall be submitted by separate petition at any one (1) election, covering the same subject matters and being for the same general purpose, but different in terms, words, and figures, the ordinance or measure receiving the greatest number of affirmative votes shall be declared the law, and all others shall be declared rejected.

(f) **CONTEST OF ELECTION.** The right to contest the returns and certification of the vote cast upon any proposed initiative or referendum measure is expressly conferred upon any ten (10) qualified electors of the county. The contest shall be brought in the chancery court and shall be conducted under the procedure for contesting the election of county officers, except that the complaint shall be filed within sixty (60) days after the certification of the vote and no bond shall be required of the contestants.

(g) **VOTE REQUIREMENT FOR ENACTMENT OF ORDINANCE.** Any measure submitted to the electors as provided in this section shall take effect and become law when approved by a majority of the votes cast upon the measure, and not otherwise, and shall not be required to receive a majority of the electors voting at the election. The measure so enacted shall be operative on and after the thirtieth day after the election at which it is approved unless otherwise specified in the ordinance or amendment.

History. Acts 1977, No. 742, § 94;
A.S.A. 1947, § 17-4011.

RESEARCH REFERENCES

UALR L.J. Heller and Sallings, Survey
of Public Law, 3 UALR L.J. 296.

CASE NOTES

ANALYSIS

- Ballot specifications.
- Calling special elections.
- Contest of elections.
- Publication of election notices.
- Vote requirements.

Ballot Specifications.

The words “Initiative Act No. 1 of White County” preceding the title was no part of the title and the omission of the words “of White County” from the ballot did not

affect its validity. *Smith v. Plant*, 179 Ark. 1024, 19 S.W.2d 1022 (1929) (decision under prior law).

Ballot title, “An act to fix the salaries and expenses of county officers and to fix the manner in which such compensations and salaries shall be paid and to reduce the costs of county government, and for other purposes,” was sufficient. *Coleman v. Sherrill*, 189 Ark. 843, 75 S.W.2d 248 (1934); *Blocker v. Sewell*, 189 Ark. 924, 75 S.W.2d 658 (1934); *House v. Brazil*, 196

Ark. 602, 119 S.W.2d 397 (1938) (decisions under prior law).

Calling Special Elections.

The matter of calling a special election, if not exercised by the electors, rests in the discretion of the county judge and/or the quorum court, either of which may determine the necessity of calling a special election. *Quattlebaum v. Davis*, 265 Ark. 588, 579 S.W.2d 599 (1979).

Contest of Elections.

Equity had no jurisdiction to try election contests involving initiated acts. *Hutto v. Rogers*, 191 Ark. 787, 88 S.W.2d 68 (1935) (decision under prior law).

Taxpayer's suit against county officials to enjoin disbursement of public revenues pursuant to provisions of initiated act by reason that submission of the question was unauthorized under the initiative and referendum act and enabling act passed pursuant thereto, and therefore did not become a law notwithstanding a favorable vote thereon, held not an election contest, and 60 day limitation would not apply to it. *Phillips v. Rothrock*, 194 Ark. 945, 110 S.W.2d 26 (1937) (decision under prior law).

In suit to restrain enforcement of an initiative act and to have the act declared invalid, exhibits attached to motion to dissolve temporary restraining order, showing that jurisdictional requirements were met in respect of initiation of the act, showed prima facie the act was legally adopted. *Sager v. Hibbard*, 203 Ark. 672, 158 S.W.2d 922 (1942) (decision under prior law).

Proper procedure to prevent calling of election on dog racing by board of commissioners was by suit against commissioners rather than against county clerk, since an election was under authority of former statutes relating to racing, and not under the power of initiative or referendum. *Townes v. McCollum*, 221 Ark. 920, 256

S.W.2d 716 (1953) (decision under prior law).

After a question is submitted to and voted upon by the people, the sufficiency of the petition was of no importance and could not be questioned. *Herrington v. Hall*, 238 Ark. 156, 381 S.W.2d 529 (1964) (decision under prior law).

Under former statute and Ark. Const. Amend. 7, validity of election wherein countywide stock law was adopted was not affected by failure of court to rule on action attacking validity of petition prior to the election where record showed no request for trial nor objection for failure to grant a trial. *Herrington v. Hall*, 238 Ark. 156, 381 S.W.2d 529 (1964) (decision under prior law).

When the Arkansas Constitution of 1874 was adopted, chancery courts had no jurisdiction with respect to election contests or the adjudication of political rights, and such jurisdiction could not be conferred by statute. *McFerrin v. Knight*, 265 Ark. 658, 580 S.W.2d 463 (1979) (decision under prior law).

Publication of Election Notices.

Acts 1911 (Ex. Sess.), No. 2, § 15, relating to the publication of initiated measures, could have no applicability to local or county measures after the adoption of Ark. Const. Amend. 7. *Reeves v. Smith*, 190 Ark. 213, 78 S.W.2d 72 (1935) (decision under prior law).

Vote Requirements.

An affirmative vote could not be given effect when the petition was not filed in compliance with the constitutional provisions. *Phillips v. Rothrock*, 194 Ark. 945, 110 S.W.2d 26 (1937) (decision under prior law).

Cited: *Henard v. St. Francis Election Comm.*, 301 Ark. 459, 784 S.W.2d 598 (1990); *Redd v. Sossomon*, 315 Ark. 512, 868 S.W.2d 466 (1994).

14-14-918. Passage of initiative and referendum measures.

(a) **RECORDING OF ENACTMENT.** Upon passage of any initiative or referendum measure by the electors, the county clerk shall record the enactment in the county ordinance and resolution register in the manner provided by law for all county ordinances and resolutions. The register entry number designation shall thereby become the official reference number designating the enactment.

(b) **QUORUM COURT AUTHORITY.** No measure approved by a vote of the electors shall be amended or repealed by a quorum court except by affirmative vote of two-thirds ($\frac{2}{3}$) of the whole number of justices comprising a court. On the passage of an amendment or repealing measure, the yeas and nays shall be called and recorded in the minutes of the meeting.

(c) **PRESERVATION OF RECORDS.** All petitions, certificates, notices, and other evidences of procedural steps taken in submitting any ordinance shall be filed and preserved for a period of three (3) years by the county clerk.

History. Acts 1977, No. 742, § 94;
A.S.A. 1947, § 17-4011.

RESEARCH REFERENCES

UALR L.J. Heller and Sallings, Survey of Public Law, 3 UALR L.J. 296 (1980).

14-14-919. Referendum petitions on county bond issue.

All referendum petitions under Arkansas Constitution, Amendment 7, against any measure, as the term is used and defined in Arkansas Constitution, Amendment 7, pertaining to a county bond issue must be filed with the county clerk within thirty (30) days after the adoption of any such measure.

History. Acts 1979, No. 717, § 1;
A.S.A. 1947, § 17-4011.1.

SUBCHAPTER 10 — JUDICIAL POWERS

SECTION.

14-14-1001. County court generally.

14-14-1002. Other judicial authorities of county court.

SECTION.

14-14-1003. Appeals.

Effective Dates. Acts 1977, No. 742, § 118: Mar. 24, 1977. Emergency clause provided: "It is hereby found by the General Assembly that the passage of Amendment 55 to the Arkansas Constitution has caused major changes in the structure of county government and that, because of said changes, a need exists to modernize laws affecting county government. It is further found that the citizens of the several counties of the State are in need of services provided by county governments and said services can best be provided under the provisions of this Act. Therefore, an emergency is hereby declared to

exist and this Act, being necessary for the public health, welfare and safety, shall be in effect from and after its passage and approval."

Acts 1979, No. 413, § 28: Mar. 20, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that Act 742 of 1977 contains certain deficiencies and ambiguities detrimental to the citizens of this State; and that amendatory legislation must be immediately enacted to remedy the defects. Therefore, an emergency is hereby declared to exist, and this Act, being necessary for the immediate

preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., §§ 193-230, 423-578.

14-14-1001. County court generally.

(a) **COURTS OF RECORD.** The county court shall be a court of record and shall keep just and faithful records of its proceedings.

(b) **SEAL OF THE COURT.** The county court of each county shall preserve and keep a seal with such emblems and devices as the court deems proper. The impression of the seal of the court by stamp shall be sufficient sealing in all cases where sealing is required.

(c) **ESTABLISHMENT OF OFFICE.** The county judge shall maintain an office in the county courthouse at the county seat. The office shall be open to the public during normal business hours. However, in counties having more than one (1) county seat or judicial district, the county court may prescribe the times and places the offices shall be open to the public for the transaction of county business.

(d) **TERM OF THE COUNTY COURT.** The terms of the county courts shall be held at the times that are prescribed for holding the supervisor's courts or may otherwise be prescribed by law. There shall be no adjournment of county courts, but such courts shall be deemed in recess when not engaged in the transaction of county business. In counties having more than one (1) judicial district, the county court shall be concurrently in session in each district.

(e) **DISQUALIFICATION OF JUDGES.** Whenever a judge of the county may be disqualified for presiding in any cause pending in his court, he shall certify the facts to the Governor, who shall thereupon commission a special judge to preside in the cause during the time the disqualification may continue or until the cause may be fully disposed of.

History. Acts 1977, No. 742, § 81; 1979, No. 413, § 19; A.S.A. 1947, § 17-3904.

14-14-1002. Other judicial authorities of county court.

(a) **INJUNCTIONS AND RESTRAINING ORDERS.** In case of the absence of the chancellor of chancery from the county, the county court may issue writs of injunctions or restraining orders, after the action has been commenced, but not before.

(b) **DEFENSE OF COUNTY.** In cases when appeals are prosecuted in the circuit court or Supreme Court, the county judge shall defend them, and all expenses or money paid out by reason of his defense shall be repaid by the proper county, by order of the county court.

(c) INJUNCTIONS AND PROVISIONAL WRITS. In the absence of the circuit judge from the county, the county judge of any county shall have power to issue orders from injunctions and other provisional writs in his county, returnable to the court having jurisdiction.

(d) WRITS OF HABEAS CORPUS. The county judge shall receive such compensation for his services as presiding judge of the county court or judge of the court of common pleas, when established, as may be provided by law. In the absence of the circuit judge from the county, the county judge shall have power to issue orders for injunctions and other provisional writs in his county, returnable to the court having jurisdiction. However, either party may have the order reviewed by any superior judge in vacation in such manner as shall be provided by law. The county judge shall have power, in the absence of the circuit judge from the county, to issue, hear, and determine writs of habeas corpus, under such regulations and restrictions as shall be provided by law.

History. Acts 1977, No. 742, § 82; 1979, No. 413, § 20; A.S.A. 1947, § 17-3905.

14-14-1003. Appeals.

Appeals from all judgments of the county courts or courts of common pleas, when established, may be taken to the circuit court, under such restrictions and regulations as may be prescribed by law.

History. Acts 1977, No. 742, § 83; A.S.A. 1947, § 17-3906.

CASE NOTES

Cited: Mears v. Hall, 263 Ark. 827, 569 S.W.2d 91 (1978); Union County v. Union County Election Comm’n, 274 Ark. 286, 623 S.W.2d 827 (1981).

SUBCHAPTER 11 — EXECUTIVE POWERS

SECTION.

- 14-14-1101. Powers of county judge generally.
- 14-14-1102. Exercise of powers by county judge.
- 14-14-1103. Other county officials.
- 14-14-1104. Administrative rules and regulations.

SECTION.

- 14-14-1105. Jurisdiction of county court.
- 14-14-1106. Appeals from administrative acts.
- 14-14-1107. Natural disasters.

Effective Dates. Acts 1977, No. 742, § 118: Mar. 24, 1977. Emergency clause provided: “It is hereby found by the General Assembly that the passage of Amendment 55 to the Arkansas Constitution has caused major changes in the structure of

county government and that, because of said changes, a need exists to modernize laws affecting county government. It is further found that the citizens of the several counties of the State are in need of services provided by county governments

and said services can best be provided under the provisions of this Act. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the public health, welfare and safety, shall be in effect from and after its passage and approval."

Acts 1997, No. 394, § 5: Mar. 6, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that devastating tornadoes and flooding recently occurred in several counties of the state; that several of the affected counties have been declared disaster areas by the Governor; that as a result of the disaster considerable cleanup services and other services will be required on private property as well as public property; that it is in the best interests of the counties involved in such disasters as well as residents of those counties that the devastated areas be cleaned up and re-

stored as quickly as is feasible; that the use of county equipment and labor to the extent the county judge deems appropriate would be beneficial to everyone involved, and that this act is designed to permit the use of county equipment and labor on private property in these limited circumstances and should be given effect immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., §§ 193-230, 423-578.

UALR L.J. Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

14-14-1101. Powers of county judge generally.

(a) Arkansas Constitution, Amendment 55, § 3, established the following executive powers to be administered by the county judge:

- (1) To preside over the county quorum court, without a vote but with the power of veto;
- (2) To authorize and approve disbursement of appropriated county funds;
- (3) To operate the system of county roads;
- (4) To administer ordinances enacted by the quorum court;
- (5) To have custody of county property; and
- (6) To hire county employees, except those persons employed by other elected officials of the county.

(b) In the performance of such executive duties, the county judge shall be bonded in the manner provided by law, as required in Arkansas Constitution, Amendment 55, § 6.

History. Acts 1977, No. 742, § 78; 1979, No. 98, § 1; 1981, No. 994, § 1; 1983, No. 183, § 1; 1983, No. 232, § 1; A.S.A. 1947, § 17-3901.

A.C.R.C. Notes. Acts 1997, No. 394, § 1, codified as § 14-14-1107, should have been merged with this section. The section has been codified as § 14-14-1107.

Publisher's Notes. Acts 1981, No. 994 became law without the Governor's signature on April 8, 1981.

Acts 1983, No. 183, § 3, provided that the General Assembly recognizes that the provisions of Acts 1981, No. 994 were confusing and contained language that could not be reconciled; that Acts 1981,

No. 994 created considerable confusion and misunderstanding, and that some counties have entered into leases, contracts, and arrangements which may be questionable under the provisions of Acts 1981, No. 994; and that in order to avoid further confusion and misunderstanding, all such contracts, leases, or other arrangements entered into by any county

during the period from the effective date of Acts 1981, No. 994 until the effective date of this act that were entered into in conformity with the law in existence prior to the effective date of Acts 1981, No. 994, or in conformity with Acts 1981, No. 994, were declared to be legal and binding.

Cross References. Self-Insured Fidelity Bond Program, § 21-2-701 et seq.

CASE NOTES

Bond.

Where an action was brought for damages against county judge for dismissing a person from position of director of county program on aging, the county judge, in hiring and firing county employees, was exercising administrative and ministerial functions under this section, since the last paragraph of this section requires the judge to be bonded in the performance of his executive duties, including the hiring

of county employees, and such bonding requirement would be meaningless if hiring and firing of county officials was a judicial function; thus, the county judge was not entitled to judicial immunity for his actions under Ark. Const., Art. 7, § 28. *Clark v. Campbell*, 514 F Supp. 1300 (W.D. Ark. 1981).

Cited: *Mears v. Hall*, 263 Ark. 827, 569 S.W.2d 91 (1978).

14-14-1102. Exercise of powers by county judge.

(a) **PERFORMANCE.** The General Assembly determines that the executive powers of the county judge as enumerated in Arkansas Constitution, Amendment 55, § 3, are to be performed by him in an executive capacity and not by order of the county court.

(b) **PROCEDURES.** In the exercise of the executive powers of the county judge as enumerated, the county judge shall adhere to the following procedures:

(1) **OPERATION OF SYSTEM OF COUNTY ROADS, BRIDGES, AND FERRIES.** (A)(i) The county judge shall be responsible for the administrative actions affecting the conduct of a plan of public roadways and bridges throughout the unincorporated areas of the county, including the maintenance and construction of public roadways and bridges and roadway drainage designated as eligible for expenditure of county funds. This jurisdiction shall be exercised pursuant to law, and nothing in this section shall be construed as limiting a county in performing public roadway and bridge maintenance and construction services within the incorporated municipal boundaries where permitted and in the manner prescribed by law.

(ii) For the purposes of this section, the term "bridges" shall include all structures erected over a river, creek, ditch, or obstruction in a public roadway. The county judge shall administer the operation of county-owned ferries.

(B)(i) The county court shall continue to exercise the powers granted by law for the granting of a right to maintain a ferry by a private individual at a particular place and at which a toll for the transportation of persons or property is levied to conduct an uninterrupted roadway over interrupted waters.

(ii) The quorum court may, by ordinance, establish appropriate procedures and schedules of tolls that may be charged by private individuals who are granted authority to operate a private ferry on connecting public roadways;

(2) AUTHORIZATION AND APPROVAL OF THE DISBURSEMENT OF APPROPRIATED COUNTY FUNDS. (A)(i) All vouchers for the payment of county funds out of the county treasury shall be approved and filed by the county judge or his designated representative, who shall be appointed by executive order of the judge and who shall be bonded in an amount equal to the county judge's bond in the manner provided by law.

(ii) Approval for payment shall be signified by the manual signature of the county judge, or his designated representative.

(iii) A copy of the executive order evidencing the designated representative's appointment shall be filed in the office of county clerk with the original of the surety bond on the designated representative.

(B) Before approving any voucher for the payment of county funds, the county judge, or his designated representative, shall determine that:

(i) There is a sufficient appropriation available for the purpose and there is a sufficient unencumbered balance of funds on hand in the appropriate county fund to pay therefor;

(ii) The expenditure is in compliance with the purposes for which the funds are appropriated;

(iii) All state purchasing laws and other state laws or ordinances of the quorum court are complied with in the expenditure of the moneys;

(iv) The goods or services for which expenditure is to be made have been rendered and the payment thereof has been incurred in a lawful manner and is owed by the county. However, a county judge may approve, in advance, claims payable to the University of Arkansas Cooperative Extension Service for educational services to be rendered during all or part of the current fiscal year.

(C)(i) No money shall be paid out of the treasury until it shall have been appropriated by law and then only in accordance with the appropriation; and all contracts for erecting and repairing the public buildings in any county or for materials therefor, or for providing for the care and feeding of paupers where there are no public or private facilities or services available for such purpose, shall be given to the lowest possible bidder under such regulations as may be prescribed by law.

(ii) The county judge shall have the authority to enter into necessary contracts or other agreements to obligate county funds and to approve expenditure of county funds appropriated therefor in the manner provided by law.

(iii)(a) The county judge of each county may promulgate appropriate administrative rules and regulations, after notice and hearing thereon, for the conduct of county financial affairs.

(b) The administrative rules and regulations shall be consistent with the provisions of laws relating to financial management of

county government and the appropriate ordinances enacted by the quorum court.

(c) All such administrative rules and regulations adopted after hearings by the county judge shall be certified by the county judge and filed in the office of the county clerk to be open to public inspection at all normal hours of business.

(3) CUSTODY OF COUNTY PROPERTY. The county judge, as the chief executive officer of the county, shall have custody of county property and shall be responsible for the administration, care, and keeping of such county property, including the right to dispose of county property in the manner and procedure provided by law for the disposal of county property by the county court. The county judge shall have the right to assign or not assign use of such property whether or not the county property was purchased with county funds or was acquired through donations, gifts, grants, confiscation, or condemnation.

(4) ADMINISTRATION OF ORDINANCES ENACTED BY THE QUORUM COURT. The county judge shall be responsible for the administration and performing the executive functions necessary for the management and conduct of county affairs, as prescribed by ordinance of the quorum court, unless the performance of such duties is vested in the county court by ordinances enacted by the quorum court or by the general laws of this state.

(5)(A) HIRING OF COUNTY EMPLOYEES, EXCEPT THOSE PERSONS EMPLOYED BY OTHER ELECTED OFFICIALS OF THE COUNTY. The county judge, as the chief executive officer of the county, shall be responsible for the employment of the necessary personnel or for the purchase of labor or services performed by individuals or firms employed by the county, or an agency thereof, for salaries, wages, or other forms of compensation.

(B)(i) "County or subdivisions thereof," for the purposes of this section, means all departments except departments administratively assigned to other elected officials of the county, boards, and subordinate service districts created by county ordinance.

(ii)(a) Jurisdiction for the hiring of employees of counties, administrative boards, or subordinate service districts may be delegated by ordinance to such board or service district, but where any county ordinance delegating authority to hire county employees interferes with the jurisdiction of the county judge, as provided in this section, it shall be implied that such delegation shall be performed only with the approval of the county judge.

(b) The jurisdiction to purchase the labor of an individual for salary or wages employed by other elected officials of the county shall be vested in each respective elected official.

(6)(A) PRESIDING OVER THE QUORUM COURT WITHOUT A VOTE, BUT WITH THE POWER OF VETO. In presiding over the quorum court, the county judge shall perform such duties in connection therewith as may be provided by state law and in accordance with rules and procedures promulgated by the court for the conduct of its business.

(B) Nothing in this subdivision shall limit the veto power of the county judge as provided in Arkansas Constitution, Amendment 55. (7)(A) ACCEPTING GIFTS, GRANTS, AND DONATIONS FROM FEDERAL, PUBLIC, OR PRIVATE SOURCES. The county judge, as the chief executive officer, is authorized to accept, in behalf of the county, gifts, grants, and donations of real or personal property for use of the county. He may apply for, enter into necessary contracts, receive, and administer for and in behalf of the county, subject to such appropriation controls that the quorum court may elect to adopt by ordinance, funds from the federal government, from other public agencies, or from private sources.

(B) All such contracts or agreements shall be filed as public record with the county clerk.

History. Acts 1977, No. 742, § 78; 1979, No. 98, § 1; 1979, No. 413, §§ 16, 17; 1981, No. 994, § 1; 1983, No. 183, § 1; 1983, No. 232, § 1; A.S.A. 1947, § 17-3901, Acts 1997, No. 387, § 1.

Publisher's Notes. Acts 1981, No. 994 became law without the Governor's signature on April 8, 1981.

Amendments. The 1997 amendment added the last sentence in (b)(2)(B)(iv).

CASE NOTES

ANALYSIS

Applicability.
County employees.
County museum.
Expenditures.
Unlawful activities.

Applicability.

This section does not apply to bribes received by a county judge. *Anderson v. Sharp County*, 295 Ark. 366, 749 S.W.2d 306 (1988).

County Employees.

The county judge, as an executive officer of the county, is vested with responsibility with respect to hiring county employees and with respect to salaries, wages, and other forms of compensation. *McCuen v. Jackson*, 265 Ark. 819, 581 S.W.2d 326 (1979).

County museum.

Designation of county building as a museum was not an illegal exaction since subdivision (b)(3) of this section and Ark. Const. Amend. 55, § 3, provide that the County Judge is the custodian of county property and is therefore authorized to determine how county property shall be

used; moreover, §§ 14-14-802(b)(2)(C)(v) and 13-5-501 et seq. authorize the County to provide for a county museum. *Haynes v. Faulkner County*, 326 Ark. 557, 932 S.W.2d 328 (1996).

Expenditures.

By electing to appeal chancellor's award of a monetary judgment, the county judge was attempting to ensure that the requirements of this section that the expenses had been incurred in a lawful manner and that payment was owed by the county were met. *Venhaus v. Pulaski County Quorum Court*, 291 Ark. 558, 726 S.W.2d 668 (1987).

Unlawful Activities.

A trial court properly prohibited a county judge from leasing county property to private interests and from contracting to use county property and employees to perform services for, and supply materials to, private interests, since such activities by the county judge would violate Ark. Const., Art. 16, § 13, and Ark. Const., Art. 12, § 5. *Pogue v. Cooper*, 284 Ark. 105, 679 S.W.2d 207 (1984).

Cited: *Mears v. Hall*, 263 Ark. 827, 569 S.W.2d 91 (1978).

14-14-1103. Other county officials.

Executive powers and duties of all county officials other than the county judge comprising the executive division of the county government shall be those established by the Arkansas Constitution and by law.

History. Acts 1977, No. 742, § 78; 1979, No. 98, § 1; 1979, No. 413, §§ 16, 17; A.S.A. 1947, § 17-3901.

CASE NOTES

Cited: Mears v. Hall, 263 Ark. 827, 569 S.W.2d 91 (1978).

14-14-1104. Administrative rules and regulations.

(a)(1) The county judge may promulgate reasonable and necessary administrative rules and regulations, after notice and hearing thereon, for the administration and conduct of the various laws and programs to be administered by the judge in his capacity as the chief executive officer of the county.

(2) These administrative rules and regulations shall be consistent with the state laws relating to the administration of county affairs by the county judge and the appropriate ordinances enacted by the quorum court.

(b) The administrative rules and regulations promulgated by the county judge in the performance of his executive functions shall not be applicable to the conduct of county business which is within the jurisdiction of the county court.

History. Acts 1977, No. 742, § 79; A.S.A. 1947, § 17-3902.

14-14-1105. Jurisdiction of county court.

(a) The General Assembly determines that all powers not vested in the county judge under the provisions of Arkansas Constitution, Amendment 55, to be exercised by the county judge as the chief executive officer of the county, shall continue to be exercised and administered by the county court, over which the judge shall preside.

(b) The county court of each county shall have exclusive original jurisdiction in all matters relating to:

(1) COUNTY TAXES. Jurisdiction shall include all real and personal ad valorem taxes collected by a county government, including all related administrative processes, assessment of property, equalization of assessments on appeal, tax levies, tax collection, and distribution of tax proceeds. This jurisdiction shall be exercised pursuant to law;

(2) PAUPERS. Jurisdiction shall include all county administrative actions affecting the conduct of public human services programs serv-

ing indigent residents of the county where such services are financed, in total or in part, by county funds;

(3) ILLEGITIMACY. [Repealed].

(4) APPRENTICESHIP OF MINORS. Jurisdiction over juvenile matters is vested in the county courts of each county and shall be exclusive in all cases of delinquency, juveniles in need of supervision, and dependency-neglect;

(5) JURISDICTION IN EACH OTHER CASE THAT MAY BE NECESSARY TO THE INTERNAL IMPROVEMENT AND LOCAL CONCERN OF THE RESPECTIVE COUNTIES. Jurisdiction shall include county financial activities and works of general public utility or advantage designed to promote intercommunications, trade and commerce, transportation of persons and property, or the development of natural resources, which are not otherwise transferred to the county judge to be administered in his executive capacity under the provision of Arkansas Constitution, Amendment 55;

(6) OTHER JURISDICTION. The county court shall have all other jurisdiction vested by law in the county court, excepting with respect to those powers formerly vested in the county court under the provisions of Arkansas Constitution, Article 7, § 28, which were transferred to the county judge under the provisions of Arkansas Constitution, Amendment 55, § 3.

History. Acts 1977, No. 742, § 80; 1979, No. 413, § 18; A.S.A. 1947, § 17-3903; Acts 1993, No. 403, § 4.

Amendments. The 1993 amendment repealed (b)(3).

CASE NOTES

County Taxes.

It is settled law that county courts have exclusive jurisdiction in all matters relating to county taxes under Ark. Const., Art. 7, § 28 and this section; however, a court of equity may grant relief against a void or illegal tax assessment. *Pockrus v. Bella Vista Village Property Owners Ass'n*, 316 Ark. 468, 872 S.W.2d 416 (1994).

Although illegal taxes can be enjoined by a court of equity, if the taxes com-

plained of are not themselves illegal, a suit for illegal exaction will not lie in chancery court; a flaw in the assessment of collection procedure, no matter how serious from the taxpayer's point of view, does not make the exaction itself illegal, and any relief from such county taxes must be sought in county court. *Pockrus v. Bella Vista Village Property Owners Ass'n*, 316 Ark. 468, 872 S.W.2d 416 (1994).

14-14-1106. Appeals from administrative acts.

Appeals by any aggrieved party from any administrative act performed, or from the nonperformance of any administrative act required by law to be performed, by the county judge acting in his capacity as the chief executive officer of the county, or any other elected county official, may be taken to the court of competent jurisdiction in the manner provided by law.

History. Acts 1977, No. 742, § 83; A.S.A. 1947, § 17-3906.

CASE NOTES

Cited: Mears v. Hall, 263 Ark. 827, 569 S.W.2d 91 (1978); Union County v. Union County Election Comm'n, 274 Ark. 286, 623 S.W.2d 827 (1981).

14-14-1107. Natural disasters.

In any county in which a natural disaster, including but not limited to a tornado or flood, results in the county being declared a disaster area by the Governor, an appropriate official of the United States Government, or the county judge of the county, the county judge is authorized to use county labor and equipment on private property to provide services which are required as a result of the natural disaster.

History. Acts 1997, No. 394, § 1.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-10, 12, 13, and §§ 14-14-101 to 14-14-1106 may not apply to this section which was enacted subsequently.

This section, codified in 1997, should have been merged with another section. The section has been codified as a separate section pursuant to § 1-2-303.

SUBCHAPTER 12 — PERSONNEL PROCEDURES

SECTION.

- 14-14-1201. Surety bond for certain county and township officers and employees.
- 14-14-1202. Ethics for county government officers and employees.
- 14-14-1203. Compensation and expense reimbursements generally.
- 14-14-1204. Compensation of elected county officers.
- 14-14-1205. Compensation of township officers.

SECTION.

- 14-14-1206. Compensation of county employees.
- 14-14-1207. Reimbursement of allowable expenses.
- 14-14-1208. Professional memberships and meetings.
- 14-14-1209. Uniform and equipment allowance for sheriff's department.

Effective Dates. Acts 1977, No. 742, § 118: Mar. 24, 1977. Emergency clause provided: "It is hereby found by the General Assembly that the passage of Amendment 55 to the Arkansas Constitution has caused major changes in the structure of county governments and that, because of said changes, a need exists to modernize laws affecting county government. It is further found that the citizens of the several counties of the State are in need of services provided by county governments and said services can best be provided under the provisions of this Act. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the public health, welfare and safety, shall be

in effect from and after its passage and approval."

Acts 1979, No. 151, §§ 4, 5: effective retroactive to Jan. 1, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law establishing maximum and minimum salaries for elected county officers is unduly restrictive and in many cases denied certain officers reasonable compensation for their services; and that this Act is designed to alleviate this problem. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its

passage and approval." Approved February 20, 1979.

Acts 1981, No. 806, § 4: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the ranges of compensation now provided by law for the various county officials are inadequate to permit reasonable and equitable compensation to such officials for their services; that this Act is designed to permit the compensation of such officers to be increased to a fair level and to enable such officers to cope with the high rate of inflation, and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 446, § 4: Mar. 14, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the ranges of compensation now provided by law for the various county officials are inadequate to permit reasonable and equitable compensation to such officials for their services; that this Act is designed to permit the compensation of such officers to be increased to a fair level and to enable such officers to cope with the high rate of inflation, and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 104, § 4: Feb. 12, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that County Sheriffs and the employees of the Sheriff's departments wear uniforms in the preservation of the public peace, health and safety and that requiring an itemized listing or numbered invoice for payment of a uniform allowance imposes a severe hardship on Sheriffs and the Sheriff's departments. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 398, § 4: Mar. 18, 1985. Emergency clause provided: "It is hereby

found and determined by the General Assembly that the ranges of compensation now provided by law for the various county officials are inadequate to permit reasonable and equitable compensation to such officials for their services; that this Act is designed to permit the compensation of such officers to be increased to a fair level and to enable such officers to cope with the high rate of inflation, and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 694, § 5: Mar. 20, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the ranges of compensation now provided by law for the various county officials are inadequate to permit reasonable and equitable compensation to such officials for their services; that this act is designed to permit the compensation of such officers to be increased to a fair level and to enable such officers to cope with the high rate of inflation, and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1161, § 5: Apr. 10, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the ranges of compensation now provided by law for the various county officials are inadequate to permit reasonable and equitable compensation to such officials for their services; that this act is designed to permit the compensation of such officers to be increased to a fair level and to enable such officers to cope with the high rate of inflation, and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 954, § 6: Apr. 8, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the ranges of compensation now provided by law for the various

county officials are inadequate to permit reasonable and equitable compensation to such officials for their services; that this act is designed to permit the compensation of such officers to be increased to a fair level and to enable such officers to cope with the high rate of inflation, and

should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-14-1201. Surety bond for certain county and township officers and employees.

(a) SURETY BOND REQUIRED. All elected or appointed county and township officers, and employees thereof, who receipt for cash funds or disburse public funds of a county by virtue of their office or employment shall obtain a surety bond.

(b) AMOUNT OF BOND. (1) The amount for which a county or township officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation. These amounts shall be fixed annually by ordinance of the quorum court of each county based on the total cash receipts and disbursements of the office for the preceding calendar year.

(2)(A) These surety bonds shall be initiated in minimum amounts computed as follows:

(i) On the first one hundred thousand dollars (\$100,000), or any part thereof, of receipts or disbursements of the office, ten percent (10%) of the amount;

(ii) On the next two hundred thousand dollars (\$200,000), or any part thereof, of receipts or disbursements of the office, seven and one-half percent (7½%) of the amount;

(iii) On the next two hundred thousand dollars (\$200,000), or any part thereof, of receipts or disbursements of the office, five percent (5%) of the amount;

(iv) On the next five hundred thousand dollars (\$500,000), or any part thereof, of the amount, two and one-half percent (2½%); and

(v) On all amounts in excess of one million dollars (\$1,000,000), one percent (1%) of the amount.

(B) The maximum amount of any bond required of any elected officer or employee thereof shall not exceed five hundred thousand dollars (\$500,000).

(c) AUTHORIZED BONDING COMPANIES. Bonds purchased by a county government shall be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in the state.

(d) CONDITIONS OF SURETIES. The condition of every official bond must be that the covered officers and employees shall perform all official duties required of them by law and also such additional duties as may be imposed on them by any law subsequently enacted, and that they will account for and pay over and deliver to the person or officer entitled

to receive the same all moneys or other property that may come into their hands as such officers or employees. The sureties upon any official bond are also in all cases liable for the neglect, default, or misconduct in office of any deputy, clerk, or employee, appointed or employed by an officer or employee of county government.

(e) **PURCHASE OF BONDS.** The county judge of each county shall purchase all surety bonds for county and township officers, and employees thereof, in the amounts fixed by ordinance of the county quorum court pursuant to the purchasing laws governing county government. A bond may cover an individual officer or employee, or a blanket bond may cover all officers and employees, or any group or combination of officers and employees.

(f) **APPROPRIATION OF BOND PREMIUMS.** The quorum court of each county shall, by appropriation, provide for the payment of premiums for surety bonds of all county and township officers, and employees thereof.

(g) **APPROVAL AND FILING OF BONDS.** All official bonds must be signed and executed by the county court of each county and one (1) or more surety companies organized under the laws of this state or licensed to do business in this state. The original of each such executed bond, as required in this section, shall be filed in the office of county clerk.

History. Acts 1977, No. 742, § 113; A.S.A. 1947, § 17-4206.

Cross References. Self-Insured Fidelity Bond Program,, § 21-2-701 et seq.

CASE NOTES

ANALYSIS

Actions on bonds.
Attorney's fees.
Conditions of sureties.
Liability of sureties.

Actions on Bonds.

The state may bring an action on a county officer's bond for the amount of the officer's defalcation. *State ex rel. Benton County v. Wood*, 51 Ark. 205, 10 S.W. 624 (1889) (decision under prior law).

Suit cannot be brought on a county officer's bond until the amount due has been determined by a court. *Graham v. State*, 100 Ark. 571, 140 S.W. 735 (1911) (decision under prior law).

Attorney's Fees.

For an indemnity agreement contained in bond executed to state to indemnify sheriff to include attorney's fees and to be recoverable by the indemnitee, the attorney's fees had to be reasonable, proper, necessary, and incurred in good faith and with due diligence; were factual questions to be determined by the trier of fact; and when properly placed in dispute, were not

matters to be disposed of on motion for summary judgment. *United States Fid. & Guar. Co. v. Love*, 260 Ark. 374, 538 S.W.2d 558 (1976) (decision under prior law).

Conditions of Sureties.

A county officer's bond that obligates the officer and his sureties that he will truly account for and pay over all moneys that come to his hands by virtue of his office is valid, although it names no obligee. *State ex rel. Benton County v. Wood*, 51 Ark. 205, 10 S.W. 624 (1889) (decision under prior law).

The failure of a county treasurer to bring funds into court when ordered constituted a breach of his bond, although the funds could have been lost by the insolvency of the bank in which they were deposited. *State ex rel. Benton County v. Wood*, 51 Ark. 205, 10 S.W. 624 (1889) (decision under prior law).

Liability of Sureties.

It is in the discretion of a court, upon a proper showing by a surety on an official bond of a county officer, to require the

officer to give a new bond and discharge the surety from future liability; however, the court has no power to discharge the surety from past liability. *Ex parte Talbot*, 32 Ark. 424 (1877) (decision under prior law).

The amount for which the bond for a county officer is liable is the amount fixed by a court, with legal interest from the date of auditing. *State ex rel. Benton County v. Wood*, 51 Ark. 205, 10 S.W. 624 (1889) (decision under prior law).

The General Assembly may release an officer and bondsmen from liability for a claim legally due, but which would be unjust and oppressive to collect. *Pearson v. State*, 56 Ark. 148, 19 S.W. 499 (1892) (decision under prior law).

Sureties on bond approved by circuit judge in vacation were not liable for any funds that came into a treasurer's hands after rejection of the bond by the circuit court and the expiration of 15 days thereafter within which the treasurer failed to file new bond. *Wood v. State*, 63 Ark. 337, 40 S.W. 87 (1897) (decision under prior law).

Sureties on an officer's bond are not liable for penalties imposed by a statute passed after the execution of the bond. *Hunter State Bank v. Mills*, 90 Ark. 10, 117 S.W. 760 (1909) (decision under prior law).

A county treasurer depositing county funds in a bank that had not executed a bond payable to the county as required by statute was not relieved from liability on his official bond on the bank's insolvency, although the treasurer took a bond from the bank payable to himself to secure his deposits, which bond was approved by the county court. *Huffstuttl v. State*, 183 Ark. 993, 39 S.W.2d 721 (1931) (decision under prior law).

A surety is not liable for punitive damages assessed against county officer. *Arnold v. State ex rel. Burton*, 220 Ark. 25, 245 S.W.2d 818 (1952) (decision under prior law).

Cited: *Wilson v. Robinson*, 506 F. Supp. 1236 (E.D. Ark. 1981).

14-14-1202. Ethics for county government officers and employees.

(a) **PUBLIC TRUST.** The holding of public office or employment is a public trust created by the confidence which the electorate reposes in the integrity of officers and employees of county government. An officer or employee shall carry out all duties assigned by law for the benefit of the people of the county. The officer or employee may not use his office, the influence created by his official position, or information gained by virtue of his position to advance his individual personal economic interest or that of an immediate member of his family or an associate, other than advancing strictly incidental benefits as may accrue to any of them from the enactment or administration of law affecting the public generally.

(b)(1) **OFFICERS AND EMPLOYEES OF COUNTY GOVERNMENT DEFINED.** For purposes of this section, officers and employees of county government shall include:

- (A) All elected county and township officers;
- (B) All district judicial officers serving a county;
- (C) All members of county boards, advisory, administrative, or subordinate service districts; and
- (D) All employees thereof.

(2) Officials who are considered to be state officers or deputy prosecuting attorneys are not covered by this subsection.

(c)(1) **RULES OF CONDUCT.** No officer or employee of county government shall:

(A) Be interested, either directly or indirectly, in any contract or transaction made, authorized, or entered into on behalf of the county or an entity created by the county, or accept or receive any property, money, or other valuable thing, for his use or benefit on account of, connected with, or growing out of any contract or transaction of a county. If, in the purchase of any materials, supplies, equipment, or machinery for the county, any discounts, credits, or allowances are given or allowed, they shall be for the benefit of the county. It shall be unlawful for any officer or employee to accept or retain them for his own use or benefit;

(B) Be a purchaser at any sale nor a vendor of any purchase made by him in his official capacity;

(C) Acquire an interest in any business or undertaking which he has reason to believe may be directly affected to its economic benefit by official action to be taken by county government;

(D) Perform an official act directly affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm or undertaking. Substantial financial interest is defined for purposes of this section as provided in Acts 1971, No. 313, § 7 [Repealed].

(2)(A) If the quorum court determines that it is in the best interest of the county, the quorum court may by ordinance permit the county to purchase goods or services directly or indirectly from quorum court members, county officers, or county employees due to unusual circumstances. The ordinance permitting such purchases must specifically define the unusual circumstances under which such purchases are allowed and the limitations of such authority.

(B) Any quorum court member having any interest in the goods or services being considered under these procedures shall not be entitled to vote upon the approval of such goods or services.

(C) If goods or services are purchased under these procedures, the county judge must file an affidavit with the county clerk certifying that each disbursement has been made in accordance with the provisions of the ordinance, together with a copy of the voucher and other documents supporting the disbursement.

(d) REMOVAL FROM OFFICE OR EMPLOYMENT. (1) COURT OF JURISDICTION. Any citizen of a county or the prosecuting attorney of a county may bring an action in the circuit court in which the county government is located to remove from office any officer or employee who has violated the rules of conduct set forth in this section.

(2) SUSPENSION PRIOR TO FINAL JUDGMENT. Pending final judgment, an officer or employee who has been charged as provided in this section may be suspended from his office or position of employment without pay. Suspension of any officer or employee pending final judgment shall be upon order of the circuit court, or judge thereof in vacation.

(3) PUNISHMENT. Judgment upon conviction for violation of the rules of conduct set forth in this section shall be deemed a misdemeanor. Punishment shall be by a fine of not less than three hundred dollars

(\$300) nor more than one thousand dollars (\$1,000), and the officer or employee shall be removed from office or employment of the county.

(4) **ACQUITTAL.** Upon acquittal, an officer or employee shall be reinstated in his office or position of employment and shall receive all back pay.

(5) **LEGAL FEES.** Any officer or employee charged as provided in this section and subsequently acquitted shall be awarded reasonable legal fees incurred in his defense. Reasonable legal fees shall be determined by the circuit court or state Supreme Court on appeal, and such legal fees shall be ordered paid out of the general fund of the county treasury.

History. Acts 1977, No. 742, § 115; 930, § 1; 1989, No. 352, § 1; 1989, No. A.S.A. 1947, § 17-4208; Acts 1987, No. 681, § 1.

CASE NOTES

Constable.

A constable is an official of the county and thus covered by workers' compensation. *Farnsworth v. White County*, 312 Ark. 574, 851 S.W.2d 451 (1993).

Cited: *Hester v. Langston*, 297 Ark. 87,

759 S.W.2d 797 (1988); *Farnsworth v. White County*, 39 Ark. App. 98, 839 S.W.2d 229 (1992), *aff'd*, 312 Ark. 574, 851 S.W.2d 451 (1993); *Post v. Harper*, 980 F.2d 491 (8th Cir. 1992).

14-14-1203. Compensation and expense reimbursements generally.

(a) **APPROPRIATION REQUIRED.** All compensation, including salary, hourly compensation, expense allowances, and other remunerations, allowed to any county or township officer, or employee thereof, shall be made only on specific appropriation by the quorum court of the county.

(b) **PAYMENTS ON CLAIMS APPROVED BY THE COUNTY JUDGE.** All compensation, including salary, hourly compensation, expense allowances, and other remuneration, allowed to any county or township officer, or employee thereof, shall be made only upon claim or voucher presented to the county judge and approved by him in the manner prescribed by law for disbursement of county funds.

(c) **EXPENSE REIMBURSEMENT.** All expense allowances and remunerations other than salary provided in this subchapter shall be made only upon voucher or claim itemizing such allowances or expenses, prepared in the manner prescribed by law, and presented to and approved by the county judge in the manner prescribed by law for the disbursement of county funds.

(d) **DECREASES IN SALARY.** Any decrease in the annual salary or compensation of a county officer shall not become effective until January 1 following a general election held after such decrease shall have been fixed by the quorum court of the county.

(e) **ENTERPRISE ACCOUNTS PROHIBITED.** No elected county or township officer, or employee thereof, shall individually maintain or operate an account for financing self-supporting activities which render services on a user charge basis to the general public.

History. Acts 1977, No. 742, § 112; 1983, No. 233, § 1; A.S.A. 1947, § 17-4205.

14-14-1204. Compensation of elected county officers.

(a) **AUTHORITY TO ESTABLISH COMPENSATION LEVELS.** The quorum court of each county shall, by ordinance, fix the annual salaries of the following county officers within the minimum and maximum provided in this section: The county judge; the sheriff and ex officio collector of taxes; the collector of taxes, where established by law; the circuit clerk; the county clerk, where established by law; the assessor; the treasurer; the coroner; and the surveyor.

(b) **CLASSIFICATION OF COUNTIES.** For purposes of determining the salaries of the elected county officers, unless otherwise specifically provided in this section, the counties shall be classified on the basis of population as determined by the preceding federal decennial census according to the following classifications:

<u>Classification</u>	<u>Population</u>		
Class 1	0	to	9,999
Class 2	10,000	to	19,999
Class 3	20,000	to	29,999
Class 4	30,000	to	49,999
Class 5	50,000	to	69,999
Class 6	70,000	to	199,999
Class 7	200,000	and	above

(c) **JUDGE OF THE COUNTY COURT.** (1) The annual salary of a county judge shall be in compensation for his services as the executive and administrator for the county, as judge of the county court, as judge of the court of common pleas, where established, as presiding officer of the quorum court, and for all other services performed as provided by the Arkansas Constitution, by law, or by county ordinance.

(2) The minimum and maximum salaries per annum of the county judge of a county shall be as follows:

<u>Classification</u>	<u>Salary Per Annum</u>
Class 1	not less than \$22,000 nor more than \$51,640
Class 2	not less than \$23,000 nor more than \$53,095
Class 3	not less than \$24,000 nor more than \$54,550
Class 4	not less than \$25,000 nor more than \$56,005
Class 5	not less than \$26,000 nor more than \$57,459

<u>Classification</u>	<u>Salary Per Annum</u>
Class 6	not less than \$27,000 nor more than \$63,278
Class 7	not less than \$28,000 nor more than \$66,188

(d) SHERIFF. (1) The annual salary of a sheriff shall be compensation for services as a law enforcement officer, as the supervisor of the county jail, as custodian of persons accused or convicted of crime, as an officer of the circuit, chancery, or county courts, and as the ex officio county tax collector and delinquent tax collector in those counties where that office is combined with the office of sheriff, and for all other services performed as provided by the Arkansas Constitution, by law, or by county ordinance. In any county in which the office of sheriff and the office of collector are combined into a single office, the maximum and minimum salaries of the county shall be one thousand three hundred ninety-two dollars (\$1,392) greater than those prescribed for the appropriate class of county in subdivision (2) of this subsection.

(2) The minimum and maximum salaries per annum of the sheriff of a county shall be as follows:

<u>Classification</u>	<u>Salary Per Annum</u>
Class 1	not less than \$22,000 nor more than \$51,640
Class 2	not less than \$23,000 nor more than \$53,095
Class 3	not less than \$24,000 nor more than \$54,550
Class 4	not less than \$25,000 nor more than \$56,005
Class 5	not less than \$26,000 nor more than \$57,459
Class 6	not less than \$27,000 nor more than \$63,278
Class 7	not less than \$28,000 nor more than \$66,188

(e) COUNTY TAX COLLECTOR. (1) In those counties where the office of county tax collector has been separated from the office of sheriff, the annual salary of a county tax collector shall be in compensation for services as tax collector and delinquent tax collector, and for all other services performed as provided by the Arkansas Constitution, by law, or by county ordinance.

(2) The minimum and maximum salaries per annum of the county tax collector in those counties where the office has been separated from the office of sheriff shall be as follows:

<u>Classification</u>	<u>Salary Per Annum</u>
Class 1	not less than \$19,000 nor more than \$47,276
Class 2	not less than \$20,000 nor more than \$48,731
Class 3	not less than \$21,000 nor more than \$50,186
Class 4	not less than \$22,000 nor more than \$51,640
Class 5	not less than \$23,000 nor more than \$53,095
Class 6	not less than \$24,000 nor more than \$57,459
Class 7	not less than \$25,000 nor more than \$60,369

(f) COUNTY AND PROBATE CLERK. (1) The annual salary of a county and probate clerk shall be in compensation for his services as county clerk, probate clerk, clerk of the county court, clerk of the quorum court, and registrar of voters, and for all other services performed as provided by the Arkansas Constitution, by law, or by county ordinance. In those counties where the office of county and probate clerk is combined with the office of circuit clerk and ex officio recorder, the salary shall be as provided in this section. In those counties where the office of county and probate clerk is combined with the office of circuit clerk and ex officio recorder, the minimum and maximum salaries shall be one thousand three hundred ninety-two dollars (\$1,392) greater than those prescribed for the appropriate class of county in subdivision (2) of this subsection.

(2) The minimum and maximum salaries per annum of the county and probate clerk of a county shall be as follows:

<u>Classification</u>	<u>Salary Per Annum</u>
Class 1	not less than \$19,000 nor more than \$47,276
Class 2	not less than \$20,000 nor more than \$48,731
Class 3	not less than \$21,000 nor more than \$50,186
Class 4	not less than \$22,000 nor more than \$51,640
Class 5	not less than \$23,000 nor more than \$53,095
Class 6	not less than \$24,000 nor more than \$57,459
Class 7	not less than \$25,000 nor more than \$60,369

(g) CIRCUIT AND CHANCERY CLERK. (1) The annual salary of a circuit clerk and ex officio recorder shall be in compensation for his services as clerk of the circuit court, as clerk of the chancery court, and as ex officio recorder, and for all other services performed as provided by the Arkansas Constitution, by law, or by county ordinance. In those counties where the office of circuit clerk and ex officio recorder is combined with the office of county and probate clerk, the minimum and maximum salaries shall be one thousand three hundred ninety-two dollars (\$1,392) greater than those prescribed for the appropriate class of county in subdivision (2) of this subsection.

(2) The minimum and maximum salaries per annum of the circuit clerk and ex officio recorder of a county shall be as follows:

<u>Classification</u>	<u>Salary Per Annum</u>
Class 1	not less than \$19,000 nor more than \$47,276
Class 2	not less than \$20,000 nor more than \$48,731
Class 3	not less than \$21,000 nor more than \$50,186
Class 4	not less than \$22,000 nor more than \$51,640
Class 5	not less than \$23,000 nor more than \$53,095
Class 6	not less than \$24,000 nor more than \$57,459
Class 7	not less than \$25,000 nor more than \$60,369

(3) In those counties where the separate office of the clerk of the chancery court shall have been created by law, the minimum and maximum salaries shall be as provided in subdivision (2) of this subsection.

(h) COUNTY ASSESSOR. (1) The annual salary of a county assessor shall be in compensation for all services performed as county assessor and appraiser, and as provided by the Arkansas Constitution, by law, or by county ordinance. In any county in which the office of assessor and collector is combined into a single office, the maximum and minimum salaries of the county assessor and collector shall be one thousand three hundred ninety-two dollars (\$1,392) greater than those prescribed for the appropriate class of county in subdivision (2) of this subsection.

(2) The minimum and maximum salaries per annum of the county assessor of a county shall be as follows:

<u>Classification</u>	<u>Salary Per Annum</u>
Class 1	not less than \$19,000 nor more than \$47,276
Class 2	not less than \$20,000 nor more than \$48,731
Class 3	not less than \$21,000 nor more than \$50,186
Class 4	not less than \$22,000 nor more than \$51,640
Class 5	not less than \$23,000 nor more than \$53,095
Class 6	not less than \$24,000 nor more than \$57,459
Class 7	not less than \$25,000 nor more than \$60,369

(i) COUNTY TREASURER. (1) The annual salary of a county treasurer shall be in compensation for all services performed as provided by the Arkansas Constitution, by law, or by county ordinance. In any county in which the office of treasurer and collector is combined into a single office, the maximum and minimum salaries of the county treasurer and collector shall be one thousand three hundred ninety-two dollars (\$1,392) greater than those prescribed for the appropriate class of county in subdivision (2) of this subsection.

(2) The minimum and maximum salaries per annum for the county treasurer of a county shall be as follows:

<u>Classification</u>	<u>Salary Per Annum</u>
Class 1	not less than \$19,000 nor more than \$47,276
Class 2	not less than \$20,000 nor more than \$48,731
Class 3	not less than \$21,000 nor more than \$50,186
Class 4	not less than \$22,000 nor more than \$51,640
Class 5	not less than \$23,000 nor more than \$53,095
Class 6	not less than \$24,000 nor more than \$57,459
Class 7	not less than \$25,000 nor more than \$60,369

(j) COUNTY CORONER. (1) The compensation of a county coroner shall be for all services performed as provided by the Arkansas Constitution, by law, or by county ordinance.

(2) The minimum and maximum salaries per annum of the county coroner of a county shall be as follows:

<u>Classification</u>	<u>Salary Per Annum</u>
Class 1 and 2	not less than \$2,638 nor more than \$11,677
Class 3 and 4	not less than \$3,540 nor more than \$17,178
Class 5 and 6	not less than \$4,443 nor more than \$39,173
Class 7	not less than \$5,343 nor more than \$44,573

(k) COUNTY SURVEYOR. Compensation of the county surveyor shall be fixed by the quorum court of each county at a rate not to exceed thirty-six dollars (\$36.00) per hour.

History. Acts 1977, No. 742, § 108; 1979, No. 151, § 1; 1981, No. 806, § 1; 1983, No. 446, § 1; 1985, No. 398, § 1; A.S.A. 1947, § 17-4201; Acts 1989, No. 694, § 1; 1991, No. 1161, § 1; 1993, No. 954, § 1; 1995, No. 661, § 1, 1997, No. 759, § 1.

Amendments. The 1993 amendment changed the dollar amounts in the tables in (c)-(j); and, in the second sentence of (h), substituted the first “assessor and collector” for “Assessor and Collector” and substituted the second “assessor and collector” for “assessor-collector.”

The 1995 amendment rewrote (c)(2), (d)(2), (e)(2), (f)(2), (g)(2), (h)(2), (i)(2) and (j)(2); added “and Chancery” in the heading in (g); and made punctuation and stylistic changes.

The 1997 amendment rewrote the salary per annum amounts throughout the section; and added the last sentence in (i)(1).

Cross References. County judges’ salary, § 14-14-811.

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

CASE NOTES

ANALYSIS

County assessors.
Sheriffs.

County Assessors.

A county court did not have the power to disallow a portion of the monthly salary claim of a deputy tax assessor, such salary allowance for the deputy being mandatory on the county court, and the court had no power to disallow any salary claims on the ground of no service rendered during a specified month. *Cowling v. Howard County*, 228 Ark. 1047, 312 S.W.2d 186 (1958) (decision under prior law).

A county assessor was merely a county officer, his salary may have been fixed by county under initiative and referendum amendment, and money paid by the state as half of the assessor’s salary was not over and above the amount provided by the initiated act. *Dew v. Ashley County*, 199 Ark. 361, 133 S.W.2d 652 (1939) (decision under prior law).

Sheriffs.

A sheriff was entitled to appoint a deputy to work with Junior Deputy Sheriffs League if the quorum court made an appropriation to pay the salary of the dep-

uty, and the county court was required to allow deputy's claim for salary. *Parker v. Adkins*, 223 Ark. 455, 266 S.W.2d 799 (1954) (decision under prior law).

14-14-1205. Compensation of township officers.

(a) JUSTICES OF THE PEACE SERVING AS MEMBERS OF A QUORUM COURT.

(1) PER DIEM COMPENSATION. (A) The per diem compensation for justices of the peace attending any official, regular, special, or committee meeting of a quorum court shall be fixed by ordinance in each county.

(B) The per diem compensation of justices shall be not less than one hundred five dollars (\$105) per diem for each regular meeting nor exceed six thousand dollars (\$6,000) per calendar year in counties having a population of less than seventy thousand (70,000) and shall not exceed seven thousand four hundred forty dollars (\$7,440) per calendar year in counties having a population of at least seventy thousand (70,000) and less than two hundred thousand (200,000), and shall not exceed eight thousand four hundred dollars (\$8,400) per calendar year in counties having a population of two hundred thousand (200,000) or more.

(2) PER DIEM COMPENSATION DEFINED. Per diem compensation is defined as a per calendar day allowance, exclusive of allowable expenses, which shall be paid a justice for attending meetings of the county quorum court. This compensation shall be based on attending meetings of a quorum court during any single calendar day without regard to the duration of the meetings.

(3) In addition to any other compensation expense reimbursement or expense allowances provided members of the quorum court, counties may provide medical insurance coverage for members of the quorum court.

(b) JUSTICES OF THE PEACE SERVING IN JUDICIAL CAPACITY. The compensation of all justices of the peace serving in a judicial capacity shall be fixed by ordinance of the quorum court in each county. This basis of compensation shall not be computed on a percentage of the dollar amount of fines levied by a justice of the peace.

(c) JUSTICE OF THE PEACE AS COUNTY EMPLOYEE OR DEPUTY. No justice of the peace shall receive compensation as a county employee or deputy, nor shall any justice receive compensation or expenses from funds appropriated by the quorum court for any services performed within the county, other than as provided by this subchapter.

(d) CONSTABLES. The compensation of all constables serving in any official capacity established by law shall be fixed by ordinance of the quorum court in each county.

History. Acts 1977, No. 742, § 109; 1979, No. 151, § 2; 1981, No. 806, § 2; 1983, No. 446, § 2; 1985, No. 398, § 2; A.S.A. 1947, § 17-4202; Acts 1989, No. 694, § 2; 1993, No. 954, § 2; 1995, No. 661, § 2; 1995, No. 1296, § 46; 1997, No. 363, § 1; 1997, No. 759, § 2.

A.C.R.C. Notes. Pursuant to Acts 1995, No. 1296, § 100, this section is set out above as amended by Acts 1995, No. 601. Subdivision (a)(1)(B) of this section was also amended by Acts 1995, No. 661 to read as follows: "The per diem compensation of justices during any one (1) calendar

year shall be not less than ninety-five dollars (\$95.00) per diem for each regular meeting nor exceed five thousand dollars (\$5,000) in the aggregate in counties having a population of less than two hundred thousand (200,000) and shall not exceed seven thousand dollars (\$7,000) in the aggregate in counties having a population of two hundred thousand (200,000) or more."

Amendments. The 1993 amendment substituted "ninety-five dollars (\$95.00)" for "seventy-five dollars (\$75.00)" in (a)(1)(B).

The 1995 amendment rewrote (a)(1)(B). The 1997 amendment by No. 363 added (a)(3).

The 1997 amendment by No. 759 in (a)(1)(B), substituted "one hundred five dollars (\$105)" for "one hundred dollars (\$100)"; substituted "six thousand dollars (\$6,000)" for "five thousand dollars (\$5,000)"; substituted "seven thousand four hundred forty dollars (\$7,440)" for "six thousand two hundred dollars (\$6,200)"; and substituted "eight thousand four hundred dollars (\$8,400)" for "seven thousand dollars (\$7,000)."

CASE NOTES

ANALYSIS

Constitutionality.
Constitutionality of ordinance.

Constitutionality.

Former statutes which allowed a specified sum for an expense account in Pulaski County were not unconstitutional in violation of former Ark. Const., Art. 19, § 23 and Ark. Const., Art. 16, § 13, but were unconstitutionally applied where the expense allowances were paid to the officer whether or not the expenses were in-

curred and without any accounting for the expenses incurred. *Tedford v. Mears*, 258 Ark. 450, 526 S.W.2d 1 (1975) (decision under prior law).

Constitutionality of Ordinance.

County ordinance affecting compensation held to be contrary to Arkansas's applicable constitutional and statutory laws that specify and restrict the compensation and expenses that quorum court members and other county officials are entitled to receive. *Massongill v. County of Scott*, 329 Ark. 98, — S.W.2d — (1997).

14-14-1206. Compensation of county employees.

(a) **COMPENSATION.** The quorum court of each county shall, by ordinance, fix the number and compensation of all county employees.

(b) **COUNTY EMPLOYEE DEFINED.** A county employee is defined as any individual or firm providing labor or service to a county for salary, wages, or any other form of compensation. "County government" for purposes of this section means all offices, departments, boards, and subordinate service districts of county government including townships created by law and subordinate to county government.

History. Acts 1977, No. 742, § 110; A.S.A. 1947, § 17-4203.

CASE NOTES

Constable.

A constable is an official of the county and thus covered by workers' compensation. *Farnsworth v. White County*, 312 Ark. 574, 851 S.W.2d 451 (1993).

Cited: *Farnsworth v. White County*, 39 Ark. App. 98, 839 S.W.2d 229 (1992), aff'd, 312 Ark. 574, 851 S.W.2d 451 (1993).

14-14-1207. Reimbursement of allowable expenses.

(a) **REIMBURSEMENT AUTHORIZED.** All elected county and township officers, and employees thereof shall be entitled to receive reimbursement of allowable expenses incurred in the conduct of county affairs where the incurrence of expense is not discretionary in the conduct of duties assigned by law. Reimbursement of allowable expenses which are incurred in the performance of discretionary functions may be permitted where provided for by a specific appropriation of the county quorum court.

(b) **ALLOWANCE FOR MEALS, LODGING, AND OTHER ALLOWABLE EXPENSES.** All reimbursements for the purchase of meals, lodging, and other allowable expenses shall be based on the actual expense incurred.

(c) **REIMBURSEMENT OF TRAVEL EXPENSE.** (1) **PRIVATELY OWNED MOTOR VEHICLES.** Any elected county or township officer, or employee thereof, utilizing a privately owned motor vehicle in the conduct of county affairs may be reimbursed at a per-mile rate established by ordinance. Reimbursement shall be based only on official miles driven, and a county shall not assume responsibility whatsoever for any maintenance, operational cost, accidents, fines, tolls, and parking fees incurred by the owner of the vehicle while on official business for the county. Where more than one (1) traveler is transported in the same vehicle, only the owner shall be entitled to mileage reimbursement.

(2) **PRIVATELY OWNED AIRPLANES.** Reimbursement for travel expense utilizing privately owned airplanes shall be the same rate as established for privately owned motor vehicles. However, reimbursement mileage shall be determined by the shortest highway route to and from the official destination.

History. Acts 1977, No. 742, § 111;
A.S.A. 1947, § 17-4204.

14-14-1208. Professional memberships and meetings.

(a) The quorum court of each county may provide, through specific appropriations, for a county to join, pay membership fees and service charges, and cooperate with the organizations and associations of county government of this state and other states for the advancement of good government and the protection of local government interests.

(b) Elected county and township officials of a county government may be allowed per diem and either mileage or actual transportation expenses for attendance at meetings of the appropriate association of local government officials. Reasonable expenses or charges against each local government, as a member of the association, may be paid by a county.

(c) Employees of a county government may be allowed per diem and either mileage or actual transportation expenses for attendance at meetings of professional organizations or associations, and a county government may pay membership fees and service charges to the organizations.

History. Acts 1977, No. 742, § 114; A.S.A. 1947, § 17-4207.

14-14-1209. Uniform and equipment allowance for sheriff's department.

(a) Upon request by the county sheriff, the county quorum court may approve and appropriate a uniform and equipment allowance for the sheriff and employees of the sheriff's department in lieu of reimbursement for actual uniform and equipment expenses.-The uniform and equipment allowance may be used for the purchase of uniforms, ammunition, and other equipment (excluding firearms) used in the performance of law enforcement duties.

(b) Claims for this uniform and equipment allowance shall be processed and paid in accordance with the laws of the State of Arkansas. However, an itemized listing or numbered invoice is not required for payment of this uniform and equipment allowance.

History. Acts 1985, No. 104, § 1; A.S.A. 1947, § 17-4205.1; Acts 1997, No. 223, § 1.

A.C.R.C. Notes. The punctuation in subsection (a) does not conform to Code style. Pursuant to § 1-2-303, the Arkan-

sas Code Revision Commission is unable to correct these errors.

Amendments. The 1997 amendment inserted "and equipment" following "uniform" throughout the section and added the last sentence of (a).

SUBCHAPTER 13 — OFFICERS GENERALLY

SECTION.

14-14-1301. County, quorum court district, and township officers.

14-14-1302. Election of officers.

14-14-1303. Bond.

14-14-1304. Oath.

14-14-1305. Commission.

14-14-1306. Residence required.

SECTION.

14-14-1307. Offices.

14-14-1308. Vacancy in office.

14-14-1309. Declaration of vacancy.

14-14-1310. Filling vacancies in elective offices.

14-14-1311. Removal from office.

14-14-1312. Remuneration.

14-14-1313. Remittance of public funds.

Effective Dates. Acts 1977, No. 742, § 118: Mar. 24, 1977. Emergency clause provided: "It is hereby found by the General Assembly that the passage of Amendment 55 to the Arkansas Constitution has caused major changes in the structure of county government and that, because of said changes, a need exists to modernize laws affecting county government. It is further found that the citizens of the sev-

eral counties of the State are in need of services provided by county governments and said services can best be provided under the provisions of this Act. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the public health, welfare and safety, shall be in effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., § 231 et seq.

C.J.S. 20 C.J.S., Counties, § 100 et seq.

14-14-1301. County, quorum court district, and township officers.

(a) COUNTY OFFICERS. There shall be elected, until otherwise determined by law, in each of the several counties of this state the following county officers:

(1) COUNTY JUDGE. (A) The county judge shall:

(i) Perform the administrative and executive functions and duties, and such additional duties as may be provided by law to be performed by the judge provided in Arkansas Constitution, Amendment 55, Section 3;

(ii) Preside over the county quorum court without a vote but with the power of veto; and

(iii) Preside over the county court and exercise those judicial and ministerial duties of the county court that were not transferred to the judge to be performed in his capacity as the chief executive officer of the county by Arkansas Constitution, Amendment 55, or as may be provided by law.

(B) The judge shall be:

(i) At least twenty-five (25) years of age;

(ii) A citizen of the United States;

(iii) A person of upright character;

(iv) A person of good business education; and

(v) A resident of the county at the time of his election and during his continuance in office;

(2) CLERK OF THE CIRCUIT COURT. The clerk of the circuit court shall be ex officio clerk of the county and probate courts and recorder. However, there may be elected a county clerk in like manner as a circuit clerk, and in such cases, the clerk may be ex officio clerk of the probate court in such county, until otherwise provided by the General Assembly, and shall bear witness and sign all writs and other judicial process acted upon by the respective courts served by the clerk;

(3) COUNTY CLERK. A county clerk may be elected in like manner as a circuit clerk, and in such cases, the clerk may be ex officio clerk of the probate court in the county, until otherwise provided by the General Assembly, and shall, if created as a separate office, bear witness and sign all writs and other judicial process acted upon by the respective courts served by the clerk;

(4) ASSESSOR. The assessor shall perform such duties as are prescribed by law;

(5) SHERIFF. (A) The sheriff, who shall be ex officio collector of taxes, unless otherwise provided by law, shall perform such duties as are prescribed by law. It shall be the general duty of each sheriff to quell and suppress all assaults and batteries, affrays, insurrections, and unlawful assemblies.

(B) The sheriff shall:

(i) Apprehend and commit to jail all felons and other offenders;

(ii) Execute all process directed to him by legal authority;

(iii) Attend upon all courts held in his county until otherwise provided by law; and

(iv) Perform all other acts and things that are required by law;

(6) **COLLECTOR OF TAXES.** A separate collector of taxes may be elected as provided by law. Each collector, upon receiving the tax charge of the county, shall proceed to collect them as may be prescribed by law;

(7) **TREASURER.** The treasurer, who shall be ex officio treasurer of the common school fund of the county, shall perform such duties as are prescribed by law. However, nothing in this chapter shall be deemed to replace or modify any law of this state authorizing school boards to appoint a treasurer for school districts as provided by law;

(8) **COUNTY SURVEYOR.** The county surveyor shall perform such duties as are prescribed by law. It shall be the general duty of the surveyor to execute all orders directed by any court of record for surveying or resurveying any tract of land, the title of which is in dispute or in litigation before the court, and to obey all orders of surveys for the partition of real estate, and to provide services to the county court when required for the purpose of surveying and measuring any proposed road;

(9) **CORONER.** The county coroner shall perform such duties as are prescribed by law.

(b) **QUORUM COURT DISTRICT AND TOWNSHIP OFFICERS.** (1) There shall be elected in each of the quorum court districts of the counties of this state one (1) justice of the peace who shall preside over the justice of the peace courts and perform such judicial duties as may be prescribed by law and who shall serve as a member of the quorum court of the county in which elected and shall perform such legislative duties as may be prescribed by law. Each justice shall be a qualified elector and a resident of the district for which he is elected.

(2) There shall be elected in each township, as preserved and continued in § 14-14-401, one (1) constable who shall have the qualifications and perform such duties as may be provided by law.

History. Acts 1977, No. 742, § 41; 1979, No. 413, §§ 6-8; A.S.A. 1947, § 17-3601.

Election — Term of office — Ex officio duties — County clerks elected in certain counties, Ark. Const., Art. 7, § 19.

Cross References. Circuit clerks —

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

CASE NOTES

ANALYSIS

Constable.
Immunity.
Sheriffs.

Constable.

A constable is an official of the county and thus covered by workers' compensation. *Farnsworth v. White County*, 39 Ark. App. 98, 839 S.W.2d 229 (1992), aff'd, 312 Ark. 574, 851 S.W.2d 451 (1993).

Where plaintiff was acting as constable when he sustained a gunshot wound to his abdomen, the county was required to furnish workers' compensation. *Farnsworth v. White County*, 312 Ark. 574, 851 S.W.2d 451 (1993).

Immunity.

Where sheriff acted pursuant to a writ of assistance in evicting plaintiff he was entitled to quasi-judicial immunity unless his conduct was beyond the scope of the immunity. *Roach v. Madden*, 728 F. Supp. 537 (E.D. Ark. 1989).

Sheriffs.

Except in cases of escape or the removal of property after order of attachment comes into his hands, a sheriff has no authority to execute process beyond his own county. *Blevins v. State*, 31 Ark. 53 (1876) (decision under prior law).

In a proceeding by a judgment creditor against a sheriff and his securities for failure to return an execution, it was no defense that the defendant in the execution was insolvent and the plaintiff was therefore not damaged; nor was it a defense that the deputy sheriff endorsed a return upon the execution and went to the clerk's office to file it, but the clerk was absent, and he afterwards was prevented by his official duties from returning to the clerk's office, without further showing

that the office remained closed beyond the life of the execution and he returned it as soon afterwards as practicable. *Atkinson v. Heer & Co.*, 44 Ark. 174 (1884) (decision under prior law).

No liability accrues for failure of a sheriff to sell attached property in his possession, condemned by order of court to be sold, until a legal demand has been made for an execution of the order. *State ex rel. Cotton v. Atkinson*, 53 Ark. 98, 13 S.W. 415 (1890) (decision under prior law).

When a sheriff attempts to justify a seizure of goods in the hands of a mortgagee under execution against the mortgagor by proving that the mortgage is fraudulent, the mortgagee may prove that the judgment, which was rendered in a justice court, while regular on its face, was void for want of jurisdiction of the mortgagor. *Townslly-Myrick Dry Goods Co. v. Fuller*, 58 Ark. 181, 24 S.W. 108 (1893); *Fitzhugh v. Hackley*, 70 Ark. 54, 66 S.W. 146 (1902) (decisions under prior law).

Where sheriff was acting pursuant to a writ of assistance specifically provided for in a decree of foreclosure executed by chancery court, and sheriff contacted plaintiff on three separate occasions to inquire whether plaintiff and his family would voluntarily surrender possession of the farm, and it was not until plaintiff refused for a third time that defendant took possession of the farm, it was of no consequence that sheriff may have used a minimal amount of force to evict plaintiff and his family, given sheriff's responsibilities as defined by the Arkansas legislature, the writ issued by chancery court, and plaintiff's confrontational attitude and refusal to leave the farm voluntarily. *Roach v. Madden*, 728 F. Supp. 537 (E.D. Ark. 1989).

Cited: *Henderson v. Dudley*, 264 Ark. 697, 574 S.W.2d 658 (1978).

14-14-1302. Election of officers.

(a) **COUNTY OFFICERS.** The qualified electors of each county in this state, at the time of electing members of the General Assembly, shall elect, until otherwise provided by law, all county officers for the term of two (2) years and until their successors are elected and qualified.

(b) **QUORUM COURT DISTRICT AND TOWNSHIP OFFICERS.** The qualified electors of each county quorum court district and township in this state shall elect each district and township officer for the term of two (2) years

and until his successor is elected and qualified. Election shall be held at the time of electing members of the General Assembly.

History. Acts 1977, No. 742, § 42; 1979, No. 413, § 9; A.S.A. 1947, § 17-3602.

CASE NOTES

Successors Elected and Qualified.

Defaulting treasurer elected to succeed himself was entitled to hold over until his successor was elected and qualified. *Hill v. Goodwin*, 82 Ark. 341, 101 S.W. 752 (1907) (decision under prior law).

Cited: *Farnsworth v. White County*, 39 Ark. App. 98, 839 S.W.2d 229 (1992), *aff'd*, 312 Ark. 574, 851 S.W.2d 451 (1993); *Farnsworth v. White County*, 312 Ark. 574, 851 S.W.2d 451 (1993).

14-14-1303. Bond.

All county, county quorum court district, and township officers shall be bonded as prescribed by law.

History. Acts 1977, No. 742, § 47; 1979, No. 413, § 9; A.S.A. 1947, § 17-3607.

A.C.R.C. Notes. Self-Insured Fidelity Bond Program, § 21-2-701 et seq.

14-14-1304. Oath.

Each county, justice of the peace, and township officer, before entering upon the discharge of the duties of his office, shall take and subscribe to the oath prescribed in the Arkansas Constitution for officers.

History. Acts 1977, No. 742, § 43; 1979, No. 413, § 9; A.S.A. 1947, § 17-3603.

14-14-1305. Commission.

(a) **COUNTY OFFICERS.** All county officers shall be commissioned by the Governor in a manner prescribed by law.

(b)(1) **QUORUM COURT DISTRICT AND TOWNSHIP OFFICERS.** All township and county quorum court district officers, except constables, shall be commissioned by the Governor in a manner prescribed by law.

(2) Constables shall be furnished with a certificate of election by the county court on which the constable's official oath shall be endorsed.

History. Acts 1977, No. 742, § 44; 1979, No. 413, § 9; A.S.A. 1947, § 17-3604.

14-14-1306. Residence required.

(a) All county, county quorum court district, and township officers shall reside within their respective townships, districts, and counties.

(b) An office shall be deemed vacant if a county officer removes his legal residence from the county or if a district or township officer removes his legal residence from the district township from which elected.

(c) For purposes of this section, legal residence shall be defined as the domicile of the officer evidenced by the intent to make such residence a fixed and permanent home.

History. Acts 1977, No. 742, § 45; 1979, No. 413, § 9; A.S.A. 1947, § 17-3605.

CASE NOTES**ANALYSIS**

Construction.

Determination of residency.

Construction.

This section does not alter Ark. Const., Art. 19, § 3, as interpreted by the Supreme Court. *Davis v. Holt*, 304 Ark. 619, 804 S.W.2d 362 (1991).

Determination of Residency.

In determining the residency of a candidate and whether he is qualified to run for office from a certain district, the conduct and actions of the candidate regarding his residency must be in conformity with his stated intent, and both the intent and conduct of the candidate must be considered as factors in determining his residency. *Brick v. Simonetti*, 279 Ark. 446, 652 S.W.2d 23 (1983).

Where, in an action challenging the residency qualifications of a candidate

who had won an election for justice of the peace in District No. 11, the evidence showed that the candidate had resided in District No. 11 for many years until her place of residence was changed to District No. 10 by a quirk of redistricting that occurred shortly before her election, and that the candidate, after learning of the change, moved into an apartment within District No. 11, set up housekeeping, changed her voter registration to the new address, obtained a telephone at the apartment, ate most of her meals at the apartment, and began making the apartment her home, the evidence supported the finding that the candidate was a resident of District No. 11. *Brick v. Simonetti*, 279 Ark. 446, 652 S.W.2d 23 (1983).

Cited: *State ex rel. Robinson v. Craighead County Bd. of Election Comm'rs*, 300 Ark. 405, 779 S.W.2d 169 (1989).

14-14-1307. Offices.

(a) The county court shall determine the location of the office of the various county, county quorum court district, and township officers.

(b) Nothing in this section, however, shall be construed to compel the county court to provide justices of the peace, constables, coroners, or surveyors with a formal office.

History. Acts 1977, No. 742, § 46; 1979, No. 413, § 9; A.S.A. 1947, § 17-3606.

14-14-1308. Vacancy in office.

A county, county quorum court district, or township office shall be considered vacant if any one (1) of the following conditions exists:

(1) The incumbent fails to meet the qualifications for office prescribed by law as evidenced by failure to be commissioned;

(2) The incumbent refuses or neglects to take and subscribe to the official oath required by law as evidenced by failure to be commissioned;

(3) The incumbent refuses, neglects, or for any other reason fails to secure an official bond required by law as evidenced by failure to be commissioned;

(4) The incumbent resigns;

(5) The incumbent ceases to meet any residence requirements for office;

(6) The incumbent is removed from office by judicial proceedings;

(7) The election or appointment of the incumbent is declared void by a judicial proceeding;

(8) The incumbent is convicted of a felony, incompetency, corruption, gross immorality, criminal conduct, malfeasance, misfeasance, or non-feasance in office by judicial proceedings;

(9) The incumbent ceases to discharge the duties of his office for a period of three (3) months, except when prevented by sickness or excused by a quorum court through resolution;

(10) The incumbent is declared of unsound mind by judicial proceedings;

(11) The quorum court determines that the incumbent has become disabled to the degree that he cannot perform the duties of his office;

(12) The incumbent holds more than one (1) office or position in conflict with the provisions of Arkansas Constitution, Article 4, § 2 or Article 19, § 6;

(13) The quorum court separates elective offices as provided by law; or

(14) The incumbent dies.

History. Acts 1977, No. 742, § 49; 1979, No. 413, § 9; A.S.A. 1947, § 17-3609.

14-14-1309. Declaration of vacancy.

(a) **CONDITIONS.** The quorum court of each county shall declare a county, county quorum court district, or township office vacant where conditions of vacancy exist as demonstrated in the following manner:

(1) Upon receipt of certification that a condition of vacancy exists as evidenced by failure of an officer to be commissioned or finding of judicial proceedings where such conditions serve as the cause of vacancy;

(2) Upon determination by a quorum court that a condition of vacancy exists in all other causes not governed by failure to be commissioned or finding of judicial proceedings. Such determination by

a quorum court shall be conducted through the process of resolution as prescribed by law if the resolution shall have been published prior to the meeting date in which the resolution is to be considered by the court.

(b) **APPEAL.** Appeals by the county, quorum court district, or township officer so affected from a declaration of vacancy by the quorum court may be taken to the circuit court if the appeal shall be filed within thirty (30) calendar days from the date of publication as required for county resolutions.

(c) **NOTIFICATION OF GOVERNOR.** The quorum court shall upon declaration of a vacancy, or within ten (10) calendar days thereafter, in any elective township office cause the declaration to be filed in writing with the Governor.

History. Acts 1977, No. 742, § 50; 1979, No. 413, § 9; A.S.A. 1947, § 17-3610.

14-14-1310. Filling vacancies in elective offices.

(a)(1) **COUNTY ELECTIVE OFFICES.** Vacancies in all county elective offices shall be filled by the county quorum court through the process of resolution as prescribed by law.

(2) **ELIGIBILITY REQUIREMENTS AND TERM OF OFFICE. (A) QUALIFICATIONS.** All officers appointed to fill a vacant county elective office shall meet all of the requirements for election to that office.

(B) **REQUIREMENTS.** All officers appointed by a quorum court shall subscribe to the oath of office, be commissioned, and be bonded as prescribed by law.

(C) **PERSONS INELIGIBLE FOR APPOINTMENT.** Any member of the quorum court shall be ineligible for appointment to fill any vacancy occurring in any county office, and resignation shall not remove such ineligibility. Husbands and wives of justices of the peace, and relatives of such justices or their husbands and wives within the fourth degree of consanguinity or affinity, shall likewise be ineligible.

(D) **TERM OF OFFICE.** All officers so appointed shall serve until their successor is elected and qualified.

(E) **SUCCESSIVE TERMS OF APPOINTED OFFICER PROHIBITED.** No person appointed to fulfill a vacant or unexpired term of an elective county office shall be eligible for appointment or election to succeed himself.

(b) **ELECTIVE TOWNSHIP OFFICES.** All vacancies in elective township offices, including justice of the peace offices, shall be filled by the Governor.

History. Acts 1977, No. 742, §§ 51, 52; 1979, No. 413, § 10; 1985, No. 682, §§ 1-3; A.S.A. 1947, §§ 17-3611, 17-3612.

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law,
Public Law, 1 UALR L.J. 230.

14-14-1311. Removal from office.

The circuit court shall have jurisdiction, upon information, presentment, or indictment, to remove any county or township officer from office for incompetency, corruption, gross immorality, criminal conduct, malfeasance, misfeasance, or nonfeasance in office.

History. Acts 1977, No. 742, § 53;
A.S.A. 1947, § 17-3613.

14-14-1312. Remuneration.

No officer of any county, county quorum court district, or township shall receive from county funds, directly or indirectly, for salary, wages, and perquisites more than the amount appropriated by the respective quorum court for each respective office per annum in par funds and paid to the officer by instrument drawn by the county judge on the treasury.

History. Acts 1977, No. 742, § 48;
1979, No. 413, § 9; A.S.A. 1947, § 17-
3608.

14-14-1313. Remittance of public funds.

All public funds coming into the possession of any officer of the county shall be remitted to the county treasury in a manner prescribed by law.

History. Acts 1977, No. 742, § 48;
1979, No. 413, § 9; A.S.A. 1947, § 17-
3608.

CHAPTER 15**OFFICERS****SUBCHAPTER**

1. GENERAL PROVISIONS.
2. COUNTY ASSESSORS.
3. COUNTY CORONERS.
4. RECORDERS.
5. SHERIFFS — GENERALLY.
6. SHERIFFS — CIVIL SERVICE SYSTEM. [REPEALED.]
7. COUNTY SURVEYORS.
8. COUNTY TREASURERS.
9. COUNTY CLERKS.
10. COUNTY COLLECTORS.

Cross References. Term of office of certain officers, § 21-1-102.

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., § 231 et seq. **C.J.S.** 20 C.J.S., Counties, § 100 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

14-15-101. Audit of accounts after expiration of term.

SECTION.

14-15-102. Environmental officer.

Effective Dates. Acts 1927, No. 85, § 5: effective on passage.

14-15-101. Audit of accounts after expiration of term.

When the term of any sheriff and ex officio collector or a county collector or county treasurer or any county official required by law to make bond expires, the county judge shall, within ten (10) days, employ a reputable public accountant or a qualified Division of Legislative Audit employee to audit the account of the retiring official and ascertain the amount due the county, state, and other funds. However, this audit shall not be made if the county judge of the county affected decides that the audit is unnecessary.

History. Acts 1927, No. 85, § 3; Pope's Dig., § 10442; A.S.A. 1947, § 12-235.

Local audits, § 10-4-201 et seq.

Cross References. Legislative audit, § 10-4-101 et seq.

14-15-102. Environmental officer.

(a) Each county within this state may employ an environmental officer who shall inspect all landfills within that county, insure compliance with all environmental ordinances, collect evidence of noncompliance and present such evidence to the prosecuting attorney. This officer shall issue citations for violation of any county ordinance prohibiting dumping of waste, garbage, litter, or any hazardous materials throughout the county.

(b) The environmental officer may complete the training course for law enforcement officers at the Law Enforcement Training Academy. After satisfactory completion of said course the environmental officer shall be a law enforcement officer.

(c) After completing the training course at the Law Enforcement Training Academy, the environmental officer may carry firearms, exe-

cute and serve any warrant or other processes issued under the authority of the county pertaining to violations of county ordinances concerning environmental protection, and make arrests and issue citations for violations of county ordinances concerning environmental protection.

History. Acts 1991, No. 722, §§ 1-3.

SUBCHAPTER 2 — COUNTY ASSESSORS

SECTION.

- 14-15-201. Form of oath.
- 14-15-202. Extension of time to take oath.
- 14-15-203. Pro rata contribution to salaries.

SECTION.

- 14-15-204. Claim for salaries and expenses.
- 14-15-205. Professional development recognition payments.

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.
Acts 1889, No. 9, § 2: effective on passage.
Acts 1947, No. 111, § 4: July 1, 1947.
Acts 1991, No. 484, § 5: Mar. 13, 1991.
Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that school districts and other taxing units, which are required to pay the expenses of the office

of county assessor, are not, under present law, provided with notice or knowledge of the proposed budgets of county assessors, or of proposed amendments thereto. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-15-201. Form of oath.

Every assessor shall, on or before January 1 succeeding his election, and before entering upon or discharging any of the duties of his office, take and subscribe to the oath prescribed in Arkansas Constitution, Article 19, Section 20, and in addition thereto, the following oath or affirmation, which shall be endorsed upon the assessment books prior to their delivery to the assessor:

"I, assessor for County, do solemnly swear that the value of all real and personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, of which statements may be made to me by persons required by law, will be appraised at its actual cash value, that in no case will I, knowingly, omit to demand of any person, or corporation, of whom by law I may be required to make such demand, a statement of the description and value of personal property, or the amount of moneys and credits, investments in bonds, stocks, joint-stock companies, or otherwise, which he may be required to list, or in any way connive at any violation or evasion of any of the requirements of the law or laws in relation to the listing or valuation of property, credits, investments in bonds, stocks, joint-stock companies or otherwise, of any kind for taxation."

History. Acts 1883, No. 114, § 58, p. 199; C. & M. Dig., § 9874; Pope's Dig., § 13623; A.S.A. 1947, § 12-802.

Cross References. Constitutional oath requirement, § 14-14-1304.

CASE NOTES

Failure to Take Oath.

Tax deed based on sale for nonpayment of taxes for a year during which assessor took oath prescribed by Arkansas Constitution, but neglected to take the special statutory oath, is valid. *Barton v. Lattourette*, 55 Ark. 81, 17 S.W. 588 (1891).

A tax sale is not rendered invalid by an assessor's failure to take the oath. *Sawyer v. Wilson*, 81 Ark. 319, 99 S.W. 389 (1907).

Failure of tax assessor to take oath of office is no ground for quashing an assessment on certiorari. *Moore v. Turner*, 43 Ark. 243 (1884).

Failure of assessor to append proper oath to his assessment return is not ground to enjoin extending of assessment on tax books. *Stell v. Watson*, 51 Ark. 516, 11 S.W. 822 (1889).

Cited: *Wildman v. Enfield*, 174 Ark. 1005, 298 S.W. 196 (1927).

14-15-202. Extension of time to take oath.

Every assessor who shall have failed to take and subscribe to the oath prescribed in § 14-15-201 at the time therein stated is granted, until the time provided by law for entering upon the discharge of his duties, to take and subscribe to the oath prescribed in § 14-15-201, and the acts of every assessor who shall take the oath within the time granted in this section shall be as valid as if he had taken and subscribed to the oath at the time provided by law.

History. Acts 1889, No. 9, § 1, p. 8; C. & M. Dig., § 9875; Pope's Dig., § 13624; A.S.A. 1947, § 12-803.

14-15-203. Pro rata contribution to salaries.

(a)(1) It is declared to be the policy of the state and local governments of Arkansas that from and after July 1, 1947, the state and every county, municipality, school district, and other taxing unit, excepting only special improvement districts to which the county assessor is not required by law to render service, receiving ad valorem or other tax funds collected by county collectors shall contribute funds for the payment of the salaries, and the necessary expenses incurred in the performance of their official duties, of the county assessors and their deputies.

(2)(A) At least twenty (20) days prior to the quorum court meeting at which the annual budget is adopted, the county assessor shall provide to each taxing unit a copy of the proposed budget of the county assessor for the next year.

(B) At least ten (10) days prior to any meeting of the quorum court at which an amendment adding an appropriation exceeding one percent (1%) of the original budget amount to the budget of the county assessor shall be presented, the county assessor shall provide to each taxing unit a copy of such proposed amendment.

(C) Copies of such budget and any such amendments shall be provided by giving copies to the following:

- (i) For the county, to the county clerk;
- (ii) For a municipality, to the clerk or recorder;
- (iii) For a school district, to the superintendent.

(b)(1) For the purpose of carrying out this policy, the amount so to be contributed annually by each of the taxing units shall be in the proportion that the total of such taxes collected for the benefit of each taxing unit bears to the total of taxes collected for the benefit of all taxing units.

(2) The pro rata contribution of the salaries and expenses of any taxing unit which receives taxes collected for the purpose of meeting debt service requirements of its issued and outstanding bonds shall be charged to and paid out of the taxing unit's general fund, and not to, or out of, any special fund it may maintain for this purpose, nor in such other manner as will diminish the amount necessary to meet such debt service requirements.

History. Acts 1947, No. 111, § 1;
A.S.A. 1947, § 12-806; Acts 1991, No. 484,
§ 1.

CASE NOTES

ANALYSIS

In general.
School districts.

In General.

The assessor's office can recover for its "salaries and necessary expenses" on a pro rata basis from taxing units it services for the collection of taxes. *Mears v. Little Rock School Dist.*, 268 Ark. 30, 593 S.W.2d 42 (1980).

School Districts.

Where the General Assembly had not passed any legislation establishing an "assessment" reasonably related to the cost of any service or specific benefit provided by the county government, the Pulaski County Quorum Court was without the authority to order the school districts to

pay a pro rata share of the salaries and expenses incurred in the collection of taxes by the county officers, other than the assessor's office. *Mears v. Little Rock School Dist.*, 268 Ark. 30, 593 S.W.2d 42 (1980).

It is the duty of the county, not the school districts, to furnish a courthouse and to provide the necessary offices for the several county officers, including the assessor and collector; therefore, the county judge erred when he diverted money from the school board's tax collection account to the county's general fund to pay the office expenses of the assessor and collector. *Venhaus v. Board of Educ.*, 280 Ark. 441, 659 S.W.2d 179 (1983).

Cited: *Strawn v. Campbell*, 226 Ark. 449, 291 S.W.2d 508 (1956).

14-15-204. Claim for salaries and expenses.

(a) The county assessor shall file an itemized claim, no less often than quarterly, with the clerk of the county court for salaries earned and for reimbursement of authorized expenses incurred. The county court shall promptly examine each claim, and if it finds the claim to be correct, the county court shall enter an order directing the county clerk

to issue a warrant upon the county treasury, payable from the county assessor's fund, hereby created, for the amount so found to be due.

(b)(1) Annually, at the time of making the final settlement of taxes collected by the county tax collector, the county funds of the various taxing units shall be charged with such units' respective pro rata shares of the salaries and expenses, as provided in § 14-15-203, and the amounts so charged shall be credited to the county assessor's fund of the county.

(2) In order to facilitate the payment of salaries and expenses, the county court may, by order duly entered, authorize and direct the county treasurer to make advance transfers from the collector's unapportioned fund, or the county general fund, to the county assessor's fund, with advances to be repaid at the time of making final settlement of amounts due the county assessor's fund.

History. Acts 1947, No. 111, § 2;
A.S.A. 1947, § 12-807.

14-15-205. Professional development recognition payments.

(a)(1) County assessors and employees of county assessors' offices shall become eligible for professional development recognition payments upon completion of the requirements enumerated in this section for each year the employee is employed full time in the county assessor's office.

(2) Such payments shall be made from appropriated funds pro rata to eligible county assessors and full-time employees of county assessors' offices up to the designated amounts from such funds as may be specifically appropriated for such payments.

(b)(1) County assessors and their employees designated as Senior (Level 4) Appraisers by the Assessment Coordination Division of the Public Service Commission shall, to the extent moneys are available, annually receive a professional development recognition payment in an amount not to exceed five hundred dollars (\$500).

(2) County assessors and their employees designated as Certified Residential Appraisers by the Arkansas Appraiser Licensing and Certification Board or as Cadastral Mapping Specialists by the International Association of Assessing Officers shall, to the extent moneys are available, annually receive a professional development recognition payment in an amount not to exceed one thousand dollars (\$1,000).

(3) County assessors and their employees designated as Certified General Appraisers by the Arkansas Appraiser Licensing and Certification Board or as Certified Assessment Evaluators by the International Association of Assessing Officers shall, to the extent moneys are available, annually receive a professional development recognition payment in an amount not to exceed two thousand dollars (\$2,000).

(c)(1) A county assessor or employee is only eligible for one (1) professional development recognition payment annually.

(2) If any county assessor or employee is eligible for professional development recognition payments in two (2) or more categories enu-

merated above, he or she shall, to the extent moneys are available, annually receive the professional development recognition payment in the amount of the highest recognition payment category.

(d)(1) In order to receive a professional development recognition payment, the county assessor or county assessor's employee shall present proof of the appropriate agency's designation to the Director of the Assessment Coordination Division, who shall authorize payment to the county assessor or employee no later than July 15.

(2) In order to receive professional development recognition payments in subsequent years, the county assessor or employee shall annually present proof to the director by June 1 that he or she has fulfilled the requirements to maintain such professional designation and that the employee has been a full-time county assessor or assessment employee for the previous year and continues to be a full-time assessor or employee.

(e) Professional development recognition payments authorized by this section shall be subject to withholding of all applicable state and federal taxes but shall not be included by retirement systems in determining benefits.

History. Acts 1995, No. 903, §§ 1, 2.

SUBCHAPTER 3 — COUNTY CORONERS

SECTION.

14-15-301. Powers and duties of a coroner.

14-15-302. Coroner's investigation.

SECTION.

14-15-303. Death certificate.

14-15-304. Confidentiality.

14-15-305. Employment.

Publisher's Notes. Former §§ 14-15-301 — 14-15-304, concerning the conservator of peace, his powers generally, and the issuance of recognizances and execution of process, were repealed by Acts 1993, No. 1301, § 3. They were derived from the following sources:

14-15-301. Rev. Stat., ch. 32, § 4; C. & M. Dig., § 1571; Pope's Dig., § 1895; A.S.A. 1947, § 12-903.

14-15-302. Rev. Stat., ch. 32, § 5; C. & M. Dig., § 1572; Pope's Dig., § 1896; A.S.A. 1947, § 12-904.

14-15-303. Rev. Stat., ch. 32, § 6; C. & M. Dig., § 1573; Pope's Dig., § 1897; A.S.A. 1947, § 12-905.

14-15-304. Rev. Stat., ch. 32, §§ 7, 8; Acts 1917, No. 206, § 1; C. & M. Dig., §§ 1574, 1575; Pope's Dig., §§ 1898, 1899; A.S.A. 1947, §§ 12-906, 12-907.

Cross References. State and local officers — Income and expenditures, § 21-7-201 et seq.

Actions against sheriffs, coroners, and other officials, § 16-56-109.

Procurement of transplantable tissue — Procurement agencies, § 20-17-617.

Deaths, § 20-18-601 et seq.

Coroners' fees, § 21-6-304.

Coroners to report deaths, § 27-53-204.

Effective Dates. Acts 1989, No. 484, § 4: Mar. 10, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that county coroners should be allowed to be employed by local emergency medical services; that this act so provides; and that this act should go into effect immediately in order to grant such authorization as soon as possible. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1301, § 7: Apr. 23, 1993.

Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that there exists confusion over the powers and duties of the various county coroners; that the confusion is compounded by a series of antiquated laws that bestow responsibilities

on a coroner not connected to his duties in modern times. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Liability for wrongful autopsy. 18 ALR 4th 858.

14-15-301. Powers and duties of a coroner.

When a death is reported to the coroner, he shall conduct an investigation concerning the circumstances surrounding the death of an individual and gather and review background information, including, but not limited to, medical information and any other information which may be helpful in determining the cause and manner of death.

History. Acts 1993, No. 1301, § 1.

14-15-302. Coroner's investigation.

(a) A coroner's investigation does not include criminal investigation responsibilities. However, the coroner shall assist any law enforcement agency or the State Crime Laboratory upon request.

(b)(1) Coroners shall be given access to all death scenes in order to perform the duties set forth in this subchapter.

(2) A coroner is authorized to issue subpoenas as necessary to secure pertinent medical or other records and testimony relevant to the determination of the cause and manner of death.

(c)(1) The coroners and their deputies who have received instruction and have been deemed qualified by the State Crime Laboratory to take and handle toxicological samples from dead human bodies are authorized to do so for the purpose of determining the presence of chemical agents which may have contributed to the cause of death.

(2) Toxicological samples may be taken from bodies in those cases where the coroner is required by law to conduct an investigation.

History. Acts 1993, No. 1301, § 1.

14-15-303. Death certificate.

If, after conducting an investigation, the law enforcement agency and prosecuting attorney of the jurisdiction are satisfied that no crime has occurred, the coroner is satisfied that the death is not the result of a crime, and the coroner knows to a reasonable certainty the cause and manner of death, the coroner or his designated deputy shall proceed to

execute a death certificate in the form and manner required by law and release the body for final disposition.

History. Acts 1993, No. 1301, § 1.

14-15-304. Confidentiality.

(a) Records gathered and created during the course of a coroner's investigation shall be confidential and deemed exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., but only until such time that the coroner issues his final report.

(b) Confidential medical information gathered during the course of the investigation shall remain exempt from public inspection and copying except as quoted in the coroner's final report.

History. Acts 1993, No. 1301, § 2.

14-15-305. Employment.

County coroners may be employed by any city emergency medical service, county emergency medical service, or joint city and county emergency medical service.

History. Acts 1989, No. 484, § 1.

SUBCHAPTER 4 — RECORDERS

SECTION.

- 14-15-401. Duties generally.
- 14-15-402. Instruments to be recorded.
- 14-15-403. Instruments affecting title to property.
- 14-15-404. Effect of recording instruments affecting title to property.
- 14-15-405. Master mortgage or deed of trust recording.
- 14-15-406. Recording certified copies of bankruptcy proceedings.
- 14-15-407. Manner of recording.
- 14-15-408. Tender of fees required.

SECTION.

- 14-15-409. Entry of instruments.
- 14-15-410. Receipt for instrument filed.
- 14-15-411. Endorsement of filing time.
- 14-15-412. Certification of recording.
- 14-15-413. Return of instrument.
- 14-15-414. Indexes to record books.
- 14-15-415. Destruction of chattel mortgages.
- 14-15-416. Failure to perform duty.
- 14-15-417. Willful neglect of duty.
- 14-15-418. Action on bond.
- 14-15-419. Seal.
- 14-15-420. Books and accounts.

Publisher's Notes. The clerk of the circuit court shall be ex officio recorder. See Ark. Const., Art. 7, § 19, and § 14-14-1301.

Cross References. Acknowledgment of instruments — Officials authorized to make within the state, § 16-47-202.

Detachment of territory generally — Order for exclusion, § 14-40-1802.

Order of incorporation — Transcript, § 14-38-104.

Preambles. Acts 1959, No. 110 contained a preamble which read: "Whereas, under the present law of this State no notice of the commencement of a bankruptcy proceeding is required to be recorded in any county wherein is located any land in which a bankrupt or a debtor in any proceeding under the act of Congress relating to bankruptcy has any interest, and

"Whereas, an act of Congress, 11 U.S.C.

Section 44(g), provides that such notice shall be recorded in any such county when the recording of the same is authorized by state law;

"Now therefore...."

Effective Dates. Acts 1875, No. 77, § 53: effective on passage.
Acts 1959, No. 168, § 3: Aug. 1, 1959.

CASE NOTES

ANALYSIS

Applicability.

Sebastian county.

Uniform commercial code.

Applicability.

This subchapter does not apply to promissory notes, and of two assignments of the same note, the first in point of time will take precedence, even though the second was recorded and the first was not. *Neal v. Bradley*, 238 Ark. 714, 384 S.W.2d 238 (1964).

Sebastian County.

The two districts of Sebastian County are, in effect, separate counties, so far as

the recording requirements of § 18-50-103 are involved. *Henson v. Fleet Mtg. Co.*, 319 Ark. 491, 892 S.W.2d 250 (1995).

Uniform Commercial Code.

Sections 14-15-101 et seq. were repealed by the Uniform Commercial Code insofar as they refer to the recording of instruments concerning "goods and chattels" as giving notice to all persons. In re *King Furn. City, Inc.*, 240 F. Supp. 453 (E.D. Ark. 1965).

14-15-401. Duties generally.

There shall be established in each county in this state an office to be styled the recorder's office, which shall be kept at the seat of justice of each county. The recorder shall duly attend to the duties of such office and who shall provide and keep in his office well-bound books in which he shall record, in a fair and legible hand, all instruments of writing authorized or required to be recorded in the manner provided.

History. Rev. Stat., ch. 124, § 1; C. & M. Dig., §§ 8616, 8617; Pope's Dig., §§ 11208, 11209; A.S.A. 1947, § 12-1001.

Cross References. Public records generally, § 14-2-101 et seq.

CASE NOTES

Salary.

Although the clerk of a circuit court has the dual function of clerk and recorder, he fills but one office, so that a legislative act

fixing the salary of the clerk of the circuit court fixes his salary both as clerk and as recorder. *Durden v. Greenwood Dist.*, 73 Ark. 305, 83 S.W. 1048 (1904).

14-15-402. Instruments to be recorded.

(a) It shall be the duty of each recorder to record, in the books provided for his office, all deeds, mortgages, conveyances, deeds of trust, bonds, covenants, defeasances, or other instruments of writing of or concerning any lands and tenements or goods and chattels, which shall be proved or acknowledged according to law, that are authorized to be recorded in his office.

(b) Each recorder shall record, in books to be provided for that purpose:

- (1) All marriage contracts and marriage certificates; and
- (2) All commissions and official bonds required to be recorded in his office.

History. Rev. Stat., ch. 124, §§ 8, 9; C. §§ 11216, 11217; A.S.A. 1947, §§ 16-101, & M. Dig., §§ 8624, 8625; Pope's Dig., 16-102.

CASE NOTES

Complaint Not Reduced to Judgment.

As a matter of law, a complaint for money damages not yet reduced to judgment was not a matter of record required to be included in an abstract of title to real property. *Bank of Cave City v. Abstract & Title Co.*, 38 Ark. App. 65, 828 S.W.2d 852 (1992).

Only the filing of a lis pendens against the property can render the complaint a

matter of record before it is reduced to judgment, but lis pendens cannot be filed for a complaint merely for a money judgment and not directly affecting the title to the real estate. *Bank of Cave City v. Abstract & Title Co.*, 38 Ark. App. 65, 828 S.W.2d 852 (1992).

Cited: *Wasp Oil, Inc. v. Arkansas Oil & Gas, Inc.*, 280 Ark. 420, 658 S.W.2d 397 (1983).

14-15-403. Instruments affecting title to property.

(a) No instrument by which the title to real estate or personal property, or any interest therein, or lien thereon, is conveyed, created, encumbered, assigned, or otherwise affected or disposed of shall be received for record or filing by the recorder unless:

(1) The name and address of the person who, and the governmental agency, if any, which, prepared the instrument appears on the face of the first page thereof; and

(2) The name is either printed, typewritten, stamped, or signed in a legible manner.

(b) An instrument will be in compliance with this section if it contains a statement in the following form:

"This instrument was prepared by,"
(name) (address)

(c) The receipt for record or filing of any instrument by the recorder without complying with the provisions of this section shall not prevent the instrument from becoming notice as provided by law.

(d)(1) Any fee charged by the recorder for recording or filing of any instrument which does not conform with the provisions of this section shall be returned by the recorder to the person who paid the fee upon request, if made within six (6) months after recording or filing of the instrument.

(2) If no such request is made within that time, the fee shall be paid into the county general fund by the recorder.

(e) This section does not apply to any instrument executed prior to August 1, 1959, nor to any decree, order, judgment, writ of any court, will, or death certificate.

History. Acts 1959, No. 168, §§ 1, 2; 1961, No. 437, § 1; A.S.A. 1947, §§ 16-118, 16-119.

Cross References. Certification of re-

corded real estate transfer to tax collector in counties adopting unit tax ledger system, § 26-28-204.

RESEARCH REFERENCES

Ark. L. Rev. Secured Transactions: Article IX: Part 1, 16 Ark. L. Rev. 108.

Secured Transactions Under the Uniform Commercial Code, 18 Ark. L. Rev. 30.

14-15-404. Effect of recording instruments affecting title to property.

(a) Every deed, bond, or instrument of writing affecting the title, in law or equity, to any real or personal property, within this state which is, or may be, required by law to be acknowledged or proved and recorded shall be constructive notice to all persons from the time the instrument is filed for record in the office of the recorder of the proper county.

(b) No deed, bond, or instrument of writing for the conveyance of any real estate, or by which the title thereto may be affected in law or equity, made or executed after December 21, 1846, shall be good or valid against a subsequent purchaser of the real estate for a valuable consideration without actual notice thereof or against any creditor of the person executing such an instrument obtaining a judgment or decree which by law may be a lien upon the real estate unless the deed, bond, or instrument, duly executed and acknowledged or proved as required by law, is filed for record in the office of the clerk and ex officio recorder of the county where the real estate is situated.

History. Acts 1846, §§ 1, 2, p. 77; 1846, §§ 1, 2, p. 108; C. & M. Dig., §§ 1536, 1537; Pope's Dig., §§ 1846, 1847; A.S.A. 1947, §§ 16-114, 16-115.

Publisher's Notes. Acts 1846, § 3, p. 77, and Acts 1846, § 3, p. 108, provided

that nothing contained in the acts would be construed to change, or in any manner affect, §§ 14-15-411, 18-40-101, and 18-40-102.

RESEARCH REFERENCES

Ark. L. Rev. Secured Transactions: Article IX: Part 1, 16 Ark. L. Rev. 108.

Nickles, A Localized Treatise on Secured Transactions — Part 1: Scope of Article 9, 34 Ark. L. Rev. 377.

Case Note, Killam v. Texas Oil & Gas Corp.: A Portrait of Uncertainty for Title Examiners and Mineral Interest Owners, 45 Ark. L. Rev. 679.

CASE NOTES

ANALYSIS

Applicability.
Actual notice.
Constructive notice.
Fraud.
Implied repeal.

Instruments not recorded.
Obligation to inquire not satisfied.
Recording.
Subsequent purchasers.
Sufficiency of notice.
Tax deeds.

Applicability.

Subsection (b) applies only to instruments touching and affecting real estate and has no applicability to assignments of promissory notes even though the notes are secured by a lien on real estate. *Neal v. Bradley*, 238 Ark. 714, 384 S.W.2d 238 (1964).

Actual Notice.

Deed for conveyance of real estate, duly executed, is good and valid against creditor of person executing such deed, obtaining a judgment, which, by law, is a lien on real estate, and also against a purchaser of such real estate at a judicial sale under the judgment, if actual notice of the deed is given to the purchaser and to the creditor, or to his attorney of record, or if such deed is filed for record at any time before the sale, though not until after the judgment is rendered and execution levied upon the land; such notice must be given at any time before, or at, the time of the sale under execution, and will be sufficient, though the deed is not produced. *Byers v. Engles*, 16 Ark. 543 (1855).

Absent recorded notice, a new barn, stockpond, barbed fence, and general clean-up were sufficient facts and circumstances as would put a man of ordinary intelligence and prudence on inquiry, and thus a second purchaser was put on actual notice. *Bowen v. Perryman*, 256 Ark. 174, 506 S.W.2d 543 (1974).

Constructive Notice.

Record of conveyance by mortgagee was not constructive notice to mortgagor. *Turman v. Sanford*, 69 Ark. 95, 61 S.W. 167 (1901).

Record of deed of owner as conveyed by an alias was constructive notice. *Kendall v. J.I. Porter Lumber Co.*, 69 Ark. 442, 64 S.W. 220 (1901).

Record of deed of growing timber was constructive notice. *Kendall v. J.I. Porter Lumber Co.*, 69 Ark. 442, 64 S.W. 220 (1901).

All persons are affected with notice of original instruments as they are filed for record in the recorder's office. *Rowland v. Griffin*, 179 Ark. 421, 16 S.W.2d 457 (1929).

An unrecorded deed is not constructive notice to a subsequent bona fide purchaser or mortgagee. *Davis v. Burford*, 197 Ark. 965, 125 S.W.2d 789 (1939).

Where purchasers of second lien attempted, under the aegis of Arkansas case law, to get around an SBA first lien, they were frustrated where court held their conduct culpable and neglectful in ignoring constructive notice under subsection (a) as well as other knowledge they evidenced of the SBA mortgage. *United States v. Hughes*, 499 F.2d 322 (8th Cir. 1974).

Recording of lien created by bill of assurance of property owners' association against property as a result of members' delinquent and unpaid assessments constituted constructive notice to all persons. *Kell v. Bella Vista Village Property Owners' Ass'n*, 258 Ark. 757, 528 S.W.2d 651 (1975).

Fraud.

In fraud actions, for purposes of determining when the statute of limitations begins to run, parties alleging fraud are charged with knowledge of any pertinent real estate conveyances from the time such conveyances are placed in public records, since filing for public record and concealment are mutually exclusive. *Hughes v. McCann*, 13 Ark. App. 28, 678 S.W.2d 784 (1984).

Implied Repeal.

Subsection (a) was repealed by the Uniform Commercial Code insofar as it refers to the recording of instruments concerning "goods and chattels" as giving notice to all persons. In *re King Furn. City, Inc.*, 240 F. Supp. 453 (E.D. Ark. 1965).

Instruments Not Recorded.

Grant of mineral deed from person in possession under recorded deed that apparently conveyed title would not be set aside on ground that prior to such deed, the title had been conveyed to the deceased husband of grantor, where deed was lost and never placed of record. *Henry v. Texas Co.*, 201 Ark. 996, 147 S.W.2d 742 (1941).

In suit to establish title to mortgaged land against purchaser at foreclosure sale on ground that, prior to execution of mortgage, plaintiff had deeded land to his wife, evidence was held to show that alleged deed was not recorded and that mortgagee knew nothing about it. *Teel v. Harnden*, 204 Ark. 103, 161 S.W.2d 1 (1942).

One who takes a deed with knowledge of a prior unrecorded deed to another is in

the same position as though the prior deed had been of record. *Skelly Oil Co. v. Johnson*, 209 Ark. 1107, 194 S.W.2d 425 (1946).

Agreement accepting a new survey as correct property line, notwithstanding existence of fences located elsewhere, which was not recorded until after litigation had arisen, was not valid against persons who had no other knowledge of such agreement. *Rindeikis v. Coffman*, 231 Ark. 422, 329 S.W.2d 550 (1959).

An assignment of a mortgage need not be recorded to be valid against later claims against the assignor. *Bryan v. Easton Tire Co.*, 262 Ark. 731, 561 S.W.2d 79 (1978).

Obligation to Inquire Not Satisfied.

Where subsequent purchaser was put on notice of prior interest in the property, he did not satisfy his obligation to inquire by consulting his own attorney, or by searching the records. There was no evidence that his attorney had any knowledge of the circumstances, and subsequent purchaser's search of the records was not a diligent inquiry as the "actual notice" exception to the protection afforded by subsection (b) covers situations in which a property interest does not appear in the records. *Massey v. Wynne*, 302 Ark. 589, 791 S.W.2d 368 (1990).

Recording.

Record of an unacknowledged mortgage is not notice. *Challis v. German Nat'l Bank*, 56 Ark. 88, 19 S.W. 115 (1892).

In case of contemporaneous conveyances of same land, deed first recorded holds. *Penrose v. Doherty*, 70 Ark. 256, 67 S.W. 398 (1902); *Storthz v. Chapline*, 71 Ark. 31, 70 S.W. 465 (1902).

Presumption of delivery of deed from its being recorded was not rebutted by proof that deed was in grantor's possession. *Estes v. German Nat'l Bank*, 62 Ark. 7, 34 S.W. 85 (1896).

Where purchaser of lands records a deed absolute, and the intent of the parties is established by clear, satisfactory, and convincing evidence that the deed is intended to be a mortgage, the court properly declares the deed a mortgage. *Gunnels v. Machen*, 213 Ark. 800, 212 S.W.2d 702 (1948).

When a properly executed and properly acknowledged lease is filed for recording, it protects the parties to the lease against

intervening rights of third parties, even though it is not properly recorded. *Wasp Oil, Inc. v. Arkansas Oil & Gas, Inc.*, 280 Ark. 420, 658 S.W.2d 397 (1983).

Subsequent Purchasers.

A bona fide purchaser of real estate for a valuable consideration who enters into possession acquires a good title against a prior, unrecorded conveyance from the same vendor. *Long v. Langsdale*, 56 Ark. 239, 19 S.W. 603 (1892).

A subsequent purchaser is not charged with notice of any fact not connected with the course of his title. *Abbott v. Parker*, 103 Ark. 425, 147 S.W. 70 (1912).

Subsequent purchasers take subject to a lien mentioned in a recorded deed; assignment of such lien need not be recorded. *Hebert v. Fellheimer*, 115 Ark. 366, 171 S.W. 144 (1914).

Where range was omitted from description, purchaser would not be held to have had notice. *Neas v. Whitener-London Realty Co.*, 119 Ark. 301, 178 S.W. 390 (1915).

Where purchaser quitclaimed back to grantor land erroneously included in his deed and quitclaim deed was recorded prior to the recording of purchaser's deed to a third person and without knowledge of it, original grantor should be regarded as an innocent purchaser for value without notice and entitled to the land. *Davis v. Burford*, 197 Ark. 965, 125 S.W.2d 789 (1939).

Where warranty deeds executed in 1932 and 1935 were not recorded until December, 1940, grantee who had obtained a deed in March, 1940, without notice of prior deeds, was an innocent purchaser under subsection (b). *Sturgis v. Nunn*, 203 Ark. 693, 158 S.W.2d 673 (1942).

A deed is effective to convey title upon its delivery to the grantee, whether recorded or not, and is good and valid against a subsequent purchaser for a valuable consideration who has actual knowledge of the deed. *Halbrook v. Lewis*, 204 Ark. 579, 163 S.W.2d 171 (1942).

A subsequent purchaser who places his deed on record acquires a title superior to a prior purchaser who does not file his deed for record until after the subsequent purchaser has filed his deed for record, if the subsequent purchase was for a valuable consideration and without actual knowledge of the prior conveyance.

Halbrook v. Lewis, 204 Ark. 579, 163 S.W.2d 171 (1942).

Under subsection (b), a subsequent purchaser acquires a superior title when he places his title of record before a previous purchaser records his title only where the purchasers derived their interests from a common grantor. Richardson v. Fisher, 236 Ark. 612, 367 S.W.2d 440 (1963).

Where there was an executed contract by both deceased husband and widow that would be specifically enforced in equity against the prior unrecorded deed with deceased remaining in possession of the property and with widow having no knowledge of the unrecorded deed, it placed the widow in the position of being an innocent purchaser for value in possession and with title to her vested by the will relating back to death of decedent and prior to recording of unrecorded deed, and rule that a parol contract to execute a will may be enforced in equity only where the agreement is established by clear, cogent, and convincing testimony would not apply. Hogan v. Hogan, 241 Ark. 377, 407 S.W.2d 735 (1966).

Purchasers held to be innocent purchasers for value and, therefore, not bound by the terms of an unrecorded lease where lease was not recorded and because the circumstances were not such as to put purchasers on notice of the lease. Garmon v. Mitchell, 53 Ark. App. 10, 918 S.W.2d 201 (1996).

Sufficiency of Notice.

Evidence sufficient to find that subsequent purchasers of mineral leases had sufficient notice of prior interest to put them on guard for an inquiry. Killam v. Texas Oil & Gas Corp., 303 Ark. 547, 798 S.W.2d 419 (1990).

Tax Deeds.

Subsection (b) gives priority to the first recording only as between purchasers deriving their interest from a common grantor. It has no application to an intervening tax deed obtained from a county clerk. Thorne v. Magness, 34 Ark. App. 39, 805 S.W.2d 95 (1991).

Cited: Roach v. Terry, 263 Ark. 774, 567 S.W.2d 286 (1978); Reichenbach v. Kizer, 174 Bankr. 997 (Bankr. E.D. Ark 1994).

14-15-405. Master mortgage or deed of trust recording.

(a) This section may be known and cited as the "Master Mortgage or Deed of Trust Recording Act of 1967."

(b)(1) An instrument containing a form or forms of covenants, conditions, obligations, powers, and other clauses of a mortgage or deed of trust may be recorded in the registry of deeds or mortgages of any county.

(2) The recorder of the county, upon the request of any person, on tender of the lawful fees therefor shall record the instrument in his registry.

(3) Every such instrument shall be entitled on the face thereof as a "Master form recorded by
(name of person causing the instrument to be recorded)."

(4) The instrument need not be acknowledged to be entitled to record.

(c) When the instrument is recorded, the recorder shall index the instrument under the name of the person causing it to be recorded in the manner provided for miscellaneous instruments relating to real estate.

(d)(1) Thereafter any of the provisions of the master form instrument may be incorporated by reference in any mortgage or deed of trust of real estate situated within this state if the reference in the mortgage or deed of trust states:

(A) That the master form instrument was recorded in the county in which the mortgage or deed of trust is offered for record;

(B) The date when and the book and page where the master form instrument was recorded; and

(C) That a copy of the master form instrument was furnished to the person executing the mortgage or deed of trust.

(2) The recording of any mortgage or deed of trust which has so incorporated by reference therein any of the provisions of a master form instrument recorded as provided in this subsection shall have the same effect as if the provision of the master form so incorporated by reference had been set forth fully in the mortgage or deed of trust.

(e) Whenever a mortgage or deed of trust is presented for recording, on which is set forth matter purporting to be a copy or reproduction of the master form instrument or of part thereof, identified by its title as provided in subdivision (b)(3) of this section and stating the date when it was recorded and the book and page where it was recorded, preceded by the words "do not record" or "not to be recorded," and plainly separated from the matter to be recorded as a part of the mortgage or deed of trust in such manner that it will not appear upon a photographic reproduction of any page containing any part of the mortgage or deed of trust, the matter shall not be recorded by the recorder to whom the instrument is presented for recording. In such a case the recorder shall record only the mortgage or deed of trust apart from the matter and shall not be liable for so doing, any other provisions of law to the contrary notwithstanding.

(f) This section shall be cumulative and supplemental to the laws of this state regarding the recording of instruments and shall repeal only such laws or parts of laws as are specifically in conflict herewith.

History. Acts 1967, No. 237, §§ 1-6;
A.S.A. 1947, §§ 16-121 — 16-125, 16-125n.

14-15-406. Recording certified copies of bankruptcy proceedings.

(a) The recorder of deeds of any county where any land in which a bankrupt or a debtor in any proceeding under the act of Congress relating to bankruptcy has any interest is located shall receive for record, and record, a certified copy of any pleading, decree, order, or other paper filed in the proceeding which any act of the Congress of the United States provides may be recorded in the records of such a county.

(b) The record shall impart notice to all persons of the bankruptcy proceeding and of the contents of the certified copy.

(c) The certified copy of the pleading, decree, order, or other paper shall be recorded and indexed in the record of deeds in the office of the recorder in the name of the bankrupt or debtor as grantor, and in the name of the trustee or receiver in bankruptcy or other person, if any, to whom the interest, or any part thereof, may pass by virtue of law or of the decree, order, or other paper as grantee.

(d) The recorder shall charge and collect the same fee for filing and recording any such document as is provided by law for filing, indexing, and recording deeds.

History. Acts 1959, No. 110, § 1;
A.S.A. 1947, § 16-120.

14-15-407. Manner of recording.

Each recorder shall, without delay, record every deed, mortgage, conveyance, deed of trust, bond, or other writing delivered to him for record, with the acknowledgment, proofs, and certificates written on or attached to the writing, and all other papers therein referred to and annexed thereto, in the order, and as of the time when, the writing has been delivered for record, by:

- (1) Entering them word for word and letter for letter;
- (2) Noting at the foot of each record all interlineations, erasures, and words visibly written on erasures; and
- (3) Noting at the foot of the record the date of the month and year when the instrument so recorded was delivered to him or deposited in his office for record.

History. Rev. Stat., ch. 124, § 11; C. & M. Dig., § 8629; Pope's Dig., § 11221;
A.S.A. 1947, § 16-105.

CASE NOTES

ANALYSIS

Acknowledgment.
Interlineations.

Acknowledgment.

Fact that recorder fails to record acknowledgment is not a valid reason to strike instrument from record book. *Wasp Oil, Inc. v. Arkansas Oil & Gas, Inc.*, 280 Ark. 420, 658 S.W.2d 397 (1983).

Interlineations.

Where record establishing a lost deed shows no interlineations, none will be presumed to have been made. *Wasson v. Lillard*, 189 Ark. 546, 74 S.W.2d 637 (1934).

14-15-408. Tender of fees required.

No recorder shall be required to endorse any instrument presented to him for record as filed or to record the instrument unless the fees for recording and the tax thereon, if any, are first tendered to him; nor shall any recorder be subject to any action or liable in any manner for a failure or refusal to record any instrument unless the fees are first tendered.

History. Acts 1875, No. 77, § 16, p. 167; C. & M. Dig., § 4584; Pope's Dig., § 5670; A.S.A. 1947, § 16-113.

Cross References. Credit for fees prohibited — Exception, § 21-7-209.
Fees of recorder, § 21-6-306.

CASE NOTES

Cited: First Nat'l Bank v. Bedford, 83 Ark. 109, 102 S.W. 683 (1907).

14-15-409. Entry of instruments.

When any deed, mortgage, deed of trust, bond, conveyance, or other instrument of writing authorized by law to be recorded is deposited in the recorder's office for record, the recorder shall enter in a book to be provided for that purpose, in alphabetical order:

- (1) The names of the persons;
- (2) The date and the nature of the instrument; and
- (3) The time of delivery for record.

History. Rev. Stat., ch. 124, § 10; C. & M. Dig., § 8628; Pope's Dig., § 11220; A.S.A. 1947, § 16-103.

14-15-410. Receipt for instrument filed.

When any deed, mortgage, deed of trust, bond, conveyance, or other instrument of writing authorized by law to be recorded shall be deposited in the recorder's office for record, the recorder shall give to the person delivering the instrument, if required, a receipt specifying the particulars of it.

History. Rev. Stat., ch. 124, § 10; C. & M. Dig., § 8628; Pope's Dig., § 11220; A.S.A. 1947, § 16-103.

14-15-411. Endorsement of filing time.

(a) It shall be the duty of the recorder to endorse the precise time the instrument is filed for record in his office on every deed, bond, or instrument of writing affecting the title in law or equity to any property, real or personal, within this state which is or may be required by law to be acknowledged or proved and recorded.

(b) It shall be the duty of the recorder to endorse on every mortgage filed in his office for record, and note in the record, the precise time the mortgage was filed for record.

History. Rev. Stat., ch. 101, § 3; Acts 1846, § 1, p. 77; 1846, § 1, p. 108; C. & M. Dig., §§ 1536, 7383; Pope's Dig., §§ 1846, 9437; A.S.A. 1947, §§ 16-104, 16-114.

Publisher's Notes. Acts 1846, § 3, p. 77, and Acts 1846, § 3, p. 108, provided

that nothing contained in the acts would be construed to change, or in any manner affect this section or §§ 18-40-101 and 18-40-102.

CASE NOTES

Acknowledgment.

Fact that recorder fails to record acknowledgment is not a valid reason to

strike instrument from record book. *Wasp Oil, Inc. v. Arkansas Oil & Gas, Inc.*, 280 Ark. 420, 658 S.W.2d 397 (1983).

14-15-412. Certification of recording.

(a) Every deed, mortgage, conveyance, deed of trust, bond, or other instrument of writing shall be considered as recorded from the time it was delivered for record.

(b) The recorder shall certify and attach to every such deed, mortgage, conveyance, deed of trust, bond, and other instrument of writing so recorded:

- (1) The day, month, and year when he received it; and
- (2) The book and page in which it is recorded.

History. Rev. Stat., ch. 124, § 12; C. & M. Dig., § 8630; Pope's Dig., § 11222; A.S.A. 1947, § 16-106.

Cross References. Attachment of mortgage liens when recorded, § 18-40-102.

CASE NOTES

Delivered for Record.

A mortgage is filed within the meaning of this section when it is delivered to the proper officer and by him received for the purpose of being recorded. *Case & Co. v. Hargadine*, 43 Ark. 144 (1884).

In counties where there are two districts, delivery to the recorder or his deputy without instructions is prima facie delivery for filing in the district where delivered. *Beaver v. Frick Co.*, 53 Ark. 18, 13 S.W. 134 (1890).

14-15-413. Return of instrument.

When recorded, the recorder shall deliver the deed, mortgage, conveyance, deed of trust, bond, or other instrument of writing to the party entitled to the instrument on his order.

History. Rev. Stat., ch. 124, § 12; C. & M. Dig., § 8630; Pope's Dig., § 11222; A.S.A. 1947, § 16-106.

14-15-414. Indexes to record books.

(a)(1) Each recorder shall provide and keep in his office a well-bound book and make and enter in the book an index, in alphabetical order, to all books of record wherein deeds, mortgages, or other instruments in writing concerning lands and tenements are recorded, distinguishing the books and pages in which every deed or writing is recorded.

(2) The index shall contain:

(A) The names of the several grantors and grantees, in alphabetical order;

(B) In case the deed is made by a sheriff, the name of the sheriff and the defendant in the execution;

(C) If by executors or administrators, their names and the names of their testator or intestate;

(D) If by attorney, the name of the attorney and his constituent; and

(E) If by a commissioner, the name of the commissioner and the person whose estate is conveyed.

(3) Each recorder shall make a reference in the several indexes of all deeds and conveyances which may be recorded, so as to afford, at all times, an easy reference to the records.

(b) Each recorder shall, in a similar manner, make, keep, and preserve:

(1) A full and perfect alphabetical index to all books of record in his office in which all deeds and instruments of writing in relation to personal property, marriage contracts, certificates of marriage, and all other papers are recorded; and

(2) A similar index of all the books of record in which commissions and official bonds are recorded, the name of the officers appointed, the obligors in any bond recorded, and a reference to the book and page where they are recorded.

History. Rev. Stat., ch. 124, §§ 13-16; C. & M. Dig., §§ 8631-8634; Pope's Dig., §§ 11223-11226; A.S.A. 1947, §§ 16-107 — 16-110.

Cross References. Index of lis pendens notices, § 16-59-104.

14-15-415. Destruction of chattel mortgages.

Circuit clerks are authorized to destroy all chattel mortgages previously filed where the due date of the obligation secured has expired six (6) years or more prior to date of destruction, together with all bound records of the chattel mortgages containing the index or abstract thereof, except such records as are utilized for the purpose of abstracting claims of wheelwright liens.

History. Acts 1975, No. 296, § 1; A.S.A. 1947, § 16-101n.

court is ex officio recorder. See Publisher's Notes at beginning of this subchapter.

Publisher's Notes. Clerk of the circuit

14-15-416. Failure to perform duty.

Any recorder to whom any deed or other writing proved or acknowledged according to law is delivered for record shall forfeit and pay any sum not exceeding five hundred dollars (\$500), to be recovered by action on his official bond, one-half (½) to the use of the county and one-half (½) to the use of the person who shall sue for it, and he shall also be liable to any person injured for all damages he may have sustained thereby, to be recovered by action on the official bond of the recorder if the recorder:

(1) Neglects or refuses to make an entry or give a receipt therefor, as required by §§ 14-15-402, 14-15-409, and 14-15-410; or

(2) Neglects or refuses to record the deed or writing within a reasonable time after receiving the deed or writing; or

(3) Records any deed or instrument of writing before another first deposited in his office and entitled to be recorded; or

(4) Records any deed or other writing incorrectly; or

(5) Neglects or refuses to provide and keep in his office such indices as required by § 14-15-414.

History. Rev. Stat., ch. 124, § 17; C. & M. Dig., § 8635; Pope's Dig., § 11227; A.S.A. 1947, § 16-111.

14-15-417. Willful neglect of duty.

If any recorder willfully neglects to perform any of the duties required of him by §§ 14-15-401, 14-15-402, 14-15-407, 14-15-409 — 14-15-414, and 14-14-416 — 14-15-420 or willfully performs them in any other manner than is required by law, he shall be deemed guilty of a misdemeanor in office and shall be proceeded against accordingly.

History. Rev. Stat., ch. 124, § 18; C. & M. Dig., § 8636; Pope's Dig., § 11228; A.S.A. 1947, § 16-112.

14-15-418. Action on bond.

If any person shall be damaged by the conduct of the recorder, that person may commence an action on his official bond in the name of the state to his use.

History. Rev. Stat., ch. 124, § 3; C. & M. Dig., § 8619; Pope's Dig., § 11211; A.S.A. 1947, § 12-1003.

Cross References. Actions on official bonds, § 16-107-201 et seq.

14-15-419. Seal.

The seal of the circuit court shall be the seal of the recorder and shall be used as such in all cases in which his official seal may be required.

History. Rev. Stat., ch. 124, § 6; C. & M. Dig., § 8622; Pope's Dig., § 11214; A.S.A. 1947, § 12-1006.

Cross References. Seal of circuit court, § 16-10-110.

14-15-420. Books and accounts.

Each recorder shall provide suitable books for his office and keep regular and faithful accounts of the expenses thereof. These accounts shall be audited by the county court and be paid out of the county treasury.

History. Rev. Stat., ch. 124, § 7; C. & M. Dig., § 8623; Pope's Dig., § 11215; A.S.A. 1947, § 12-1007.

Cross References. Bonds of state, county, and district officers generally, § 21-2-107.

SUBCHAPTER 5 — SHERIFFS — GENERALLY

SECTION.

14-15-501. Conservator of peace — Recognizances.

14-15-502. Validity of bonds.

14-15-503. Powers of deputies.

SECTION.

14-15-504. Additional personnel for new jails.

14-15-505. Settlement moneys received or due.

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1975 (Extended Sess., 1976), No. 1172, § 3: Feb. 11, 1976. Emergency clause provided: "It is hereby found and determined by the General Assembly that new and expanded jail facilities have recently been constructed and placed into use in certain counties in the State; that the operation of such new and expanded facilities was not taken into consideration in prescribing the number of positions and compensation of deputies and other employees of the county sheriff's office when Act 830 of 1975 was enacted; that in such counties, it is essential that the sheriff's office be provided additional personnel in order that the new and expanded facilities may be utilized to their fullest capability; that this Act is designed to authorize the quorum court in such counties to provide such necessary additional positions and to prescribe the compensation therefor and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 237, § 3: Feb. 23, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that due to the increase in crime rate, especially in suburban areas, it is necessary to expand

the authority of deputy sheriffs to provide more adequate protection to the citizens of this State, and that crime protection can be afforded planned communities by their employment of deputy sheriffs as security officers. Therefore, an emergency is declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from the date of its approval."

Acts 1983, No. 171, § 3: Feb. 14, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that Arkansas Statue 12-1107(b) presently provides that deputy sheriffs are authorized to exercise all powers as deputy sheriffs while in the course of their employment as security officers for property owners associations; that the wording regarding their employment as security officers has resulted in confusion regarding the authority and duty of the Law Enforcement Training Academy to accept and train such deputies; that the elimination of such wording will result in the Law Enforcement Training Academy clearly having the authority and duty to train such deputy sheriffs; and that this Act is immediately necessary to clarify this law. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 70 Am. Jur. 2d, Sheriff, § 1 et seq.

C.J.S. 80 C.J.S., Sheriffs & C., § 1 et seq.

14-15-501. Conservator of peace — Recognizances.

(a) Each sheriff shall be a conservator of the peace in his county and shall cause all offenders against the laws of this state, in his view or hearing, to enter into recognizance to keep the peace and appear at the next term of the circuit court of the county and, on the failure of the offender to enter into recognizance, to commit him to jail.

(b) The sheriff shall certify to the clerk of the circuit court all recognizances taken by him.

History. Rev. Stat., ch. 140, §§ 8, 9; C. §§ 11817, 11818; A.S.A. 1947, §§ 12-1108, & M. Dig., §§ 9156, 9157; Pope's Dig., 12-1109.

CASE NOTES**Municipal Courts.**

Sheriff may serve process of municipal court. *Miller County v. Magee*, 177 Ark. 752, 7 S.W.2d 973 (1928).

14-15-502. Validity of bonds.

No bond entered into by a sheriff shall be deemed void for not having the approval of the court or clerk endorsed thereon.

History. Rev. Stat., ch. 140, § 4; C. & M. Dig., § 9150; Pope's Dig., § 11812; A.S.A. 1947, § 12-1103.

14-15-503. Powers of deputies.

(a) Every deputy sheriff appointed as provided by law shall possess all the powers of his principal and may perform any of the duties required by law to be performed by the sheriff.

(b) Deputy sheriffs are authorized to make arrests for misdemeanor offenses and felony offenses and exercise all other powers as deputy sheriffs while in the course of their employment for planned community property owners' associations or suburban improvement districts.

(c) Every deputy sheriff so appointed shall possess the minimum qualifications as provided by law.

(d) Planned community property owners' associations shall purchase and maintain liability insurance to protect deputy sheriffs employed by such associations. Liability insurance coverage shall be in a principal amount of no less than fifty thousand dollars (\$50,000) for each deputy sheriff employed by the association.

History. Rev. Stat., ch. 140, § 7; C. & M. Dig., § 9155; Pope's Dig., § 11816; 1107. Acts 1977, No. 237, § 1; 1983, No. 171, § 1; 1985, No. 561, § 1; A.S.A. 1947, § 12-1107.

RESEARCH REFERENCES

UALR L.J. Seventeenth Annual Survey of Arkansas Law — Criminal Law, 17 UALR L.J. 448.

CASE NOTES

ANALYSIS

In general.
Appointment of deputies.
Authority of deputies.
Legislative intent.
Liability of sheriffs.

In General.

This section is merely declaratory of the common law. *Davidson v. Chandler*, 206 Ark. 375, 175 S.W.2d 567 (1943) (decision prior to 1977 amendment).

Appointment of Deputies.

Appointment of deputy expires with the term of the principal; on reelection of principal, new appointment is necessary. *Greenwood v. State*, 17 Ark. 332 (1856).

This section refers to general deputies and does not take away the common law right of a sheriff to depute his authority to another for a particular service. *Putman v. State*, 49 Ark. 449, 5 S.W. 715 (1887).

Sheriff was entitled to appoint deputy to work with Junior Deputy Sheriffs League if quorum court made an appropriation to pay the salary of the deputy, and county court was required to allow deputy's claim for salary. *Parker v. Adkins*, 223 Ark. 455, 266 S.W.2d 799 (1954).

Authority of Deputies.

A deputy sheriff is not, by reason of such appointment, authorized to act as deputy collector, although both offices are held by his principal. *Crowell v. Barham*, 57 Ark. 195, 21 S.W. 33 (1893); *Boone County Bank v. Eoff*, 66 Ark. 321, 50 S.W. 688 (1899).

A deputy sheriff cannot, as such, engage to guard the property of a private person not in the custody of the law. *St. Louis, I.M. & S. Ry. v. Hackett*, 58 Ark. 381, 24 S.W. 881 (1894).

Where sheriff appointed a deputy and signed a card for identification purposes, the introduction of the card in evidence was not prejudicial when the evidence showed that the deputy acted and as-

sumed he had authority to make an arrest for a traffic violation. *Wilkerson v. State*, 212 Ark. 603, 206 S.W.2d 758 (1947).

As a sheriff is given the legislative authority to be a conservator of the peace in his county under § 14-15-501, the same is true of a deputy sheriff employed by a planned community, for he is likewise authorized to stand in the stead of his sheriff and discharge his duties throughout his county. *Gritts v. State*, 315 Ark. 1, 864 S.W.2d 859 (1993).

Deputies employed by planned communities have the authority to arrest. *Gritts v. State*, 315 Ark. 1, 864 S.W.2d 859 (1993).

Legislative Intent.

The legislature intended to provide all deputy sheriffs with the power to perform all duties as required by law to be performed by a sheriff, and, in addition, these powers are specifically provided to deputy sheriffs while in the course of their employment for planned community property owners associations. *Gritts v. State*, 315 Ark. 1, 864 S.W.2d 859 (1993).

Liability of Sheriffs.

Sheriff is liable for unjustifiable assault of his deputy while in discharge of his duty. *Edgin v. Talley*, 169 Ark. 662, 276 S.W. 591 (1925).

Sheriff is not liable on account of his deputy's negligence in driving car on way to make an arrest. *Usrey v. Yarnell*, 181 Ark. 804, 27 S.W.2d 988 (1930).

The general rule is that for all civil purposes, the acts of a deputy sheriff are those of his principal; hence, a sheriff is liable for the act, default, tort, or other misconduct done or committed by his deputy, *colore officii*. *Davidson v. Chandler*, 206 Ark. 375, 175 S.W.2d 567 (1943).

Where citizen, who attempted to stop unjustified beating of elderly man by deputy sheriff following automobile collision while deputy was transporting prisoners to court, was killed by the deputy, sheriff was held not liable, since the act of the

deputy was not, on the facts presented, done under the color of his office. Davidson v. Chandler, 206 Ark. 375, 175 S.W.2d 567 (1943).

Under the common law, a sheriff is liable for the actions of his appointed

deputies and has control over their selection and retention. Dilday v. State, 300 Ark. 249, 778 S.W.2d 618 (1989).

Cited: Brenneman v. State, 264 Ark. 460, 573 S.W.2d 47 (1978); Pipes v. State, 22 Ark. App. 235, 738 S.W.2d 423 (1987).

14-15-504. Additional personnel for new jails.

In any county in this state in which newly constructed jail facilities have been put into use since November 1, 1975, the quorum court of the county is authorized to provide additional positions for the county sheriff's office, in addition to those positions authorized in Acts 1975, No. 830 [repealed], and to prescribe the compensation and allowances for persons holding such positions.

History. Acts 1975 (Extended Sess., 1976), No. 1172, § 1; A.S.A. 1947, § 12-1119.

Publisher's Notes. Acts 1975, No. 830, referred to in this section, was repealed by Acts 1977, No. 742, § 117.

14-15-505. Settlement moneys received or due.

(a) It shall be the duty of the clerks of all courts of record, at each term thereof, to settle with the sheriff of each county for all moneys received by him, or which he ought to have collected for the use of the county, and which have not been accounted for. They shall make out two (2) separate lists of all sums chargeable to any sheriff and payable to any county, specifying on what account, and certify them under the seal of the court.

(b) One (1) of the lists so certified shall be immediately transmitted to the clerk of the county court to which the sums are payable, who shall immediately charge it accordingly, and the other shall be transmitted to the treasurer of the county.

History. Acts 1883, No. 114, §§ 182, 183, p. 199; C. & M. Dig., §§ 9163, 9164, 10144, 10145; Pope's Dig., §§ 11824, 11825, 13926, 13927; A.S.A. 1947, §§ 12-1111, 12-1112.

Cross References. State and local officers — Income and expenditures, § 21-7-201 et seq.

SUBCHAPTER 6 — SHERIFFS — CIVIL SERVICE SYSTEM

SECTION.

14-15-601 — 14-15-619. [Repealed.]

14-15-601 — 14-15-619. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1987, No. 657, § 1. The subchapter was derived from the following sources:

14-15-601. Acts 1977, No. 952, § 17; A.S.A. 1947, § 12-1136.

14-15-602. Acts 1977, No. 952, § 1; 1981, No. 705, § 1; 1981, No. 966, § 1; 1983, No. 190, § 1; 1985, No. 395, § 1; A.S.A. 1947, § 12-1120.

14-15-603. Acts 1977, No. 952, § 14; A.S.A. 1947, § 12-1133.

14-15-604. Acts 1977, No. 952, § 18; A.S.A. 1947, § 12-1137.

14-15-605. Acts 1977, No. 952, § 1; 1981, No. 705, § 1; 1981, No. 966, § 1; 1983, No. 190, § 1; 1985, No. 395, § 1; A.S.A. 1947, § 12-1120.

14-15-606. Acts 1977, No. 952, § 1; 1981, No. 705, § 1; 1981, No. 966, § 1; 1983, No. 190, § 1; 1985, No. 395, § 1; A.S.A. 1947, § 12-1120.

14-15-607. Acts 1977, No. 952, § 2; 1983, No. 190, § 2; A.S.A. 1947, § 12-1121.

14-15-608. Acts 1977, No. 952, § 3; A.S.A. 1947, § 12-1122.

14-15-609. Acts 1977, No. 952, § 4; A.S.A. 1947, § 12-1123.

14-15-610. Acts 1977, No. 952, § 5; A.S.A. 1947, § 12-1124; Acts 1987, No. 332, § 1.

14-15-611. Acts 1977, No. 952, § 6; A.S.A. 1947, § 12-1125.

14-15-612. Acts 1977, No. 952, § 10; A.S.A. 1947, § 12-1129.

14-15-613. Acts 1977, No. 952, § 9; A.S.A. 1947, § 12-1128.

14-15-614. Acts 1977, No. 952, § 8; A.S.A. 1947, § 12-1127.

14-15-615. Acts 1977, No. 952, § 13; A.S.A. 1947, § 12-1132.

14-15-616. Acts 1977, No. 952, § 16; A.S.A. 1947, § 12-1135.

14-15-617. Acts 1977, No. 952, §§ 7, 15; A.S.A. 1947, §§ 12-1126, 12-1134.

14-15-618. Acts 1977, No. 952, § 12; A.S.A. 1947, § 12-1131.

14-15-619. Acts 1977, No. 952, § 11; A.S.A. 1947, § 12-1130.

SUBCHAPTER 7 — COUNTY SURVEYORS

SECTION.

14-15-701. Qualifications.

14-15-702. Duties generally.

14-15-703. Chainmen.

14-15-704. Appointment of another surveyor.

14-15-705. Survey of lands sold for taxes.

14-15-706. Survey of public land.

14-15-707. Establishment of corners.

SECTION.

14-15-708. Calculating tract contents.

14-15-709. Instruments required — Record book.

14-15-710. Delivery of records to successor.

14-15-711. Conclusiveness of official survey.

14-15-712. Admissibility of certified copy.

Cross References. State and local officers — Income and expenditures, § 21-7-201 et seq.

Field Notes and records — Fees for copies, § 22-5-704.

Delivery of records to successor, § 21-12-401 et seq.

Fees for county surveyors, § 21-6-303.

Furnishing accurate description of all tracts by county assessor, § 26-26-717.

County timber inspector, § 15-32-201 et seq.

14-15-701. Qualifications.

Effective January 1, 1987, no person shall be eligible to seek or hold the office of county surveyor unless the person is registered as a land surveyor by the State Board of Registration for Professional Engineers and Land Surveyors.

History. Acts 1963, No. 193, § 1; 1985, No. 549, § 1; A.S.A. 1947, § 12-1222.

Publisher's Notes. Acts 1985, No. 549, § 2, provided that any person having held the office of county surveyor in any county

in this state on June 28, 1985, shall be registered as a land surveyor by the State Board of Registration for Professional Engineers and Land Surveyors if the person:

(1) Files an application with the board for

registration; (2) Furnishes satisfactory proof that the applicant is either registered as a professional engineer or has

had at least two years of experience as a practical surveyor; and (3) Pays an application fee of \$35.00.

14-15-702. Duties generally.

It shall be the duty of the county surveyor to execute all orders directed to him by any court of record for surveying or resurveying any tract of land, the title of which is in dispute or in litigation before the court, and to obey all orders of survey for the partition of real estate, and also to accompany viewers and reviewers of roads for the purpose of running and measuring any proposed road, whenever required by the viewers or reviewers.

History. Rev. Stat., ch. 40, § 5; C. & M. Dig., § 1888; Pope's Dig., § 2405; A.S.A. 1947, § 12-1205.

14-15-703. Chainmen.

The necessary chainmen shall be employed by the person wanting surveying done, but they shall be good and disinterested persons, to be approved by the surveyor, and shall be sworn by the surveyor to measure justly and exactly, according to the best of their abilities.

History. Rev. Stat., ch. 40, § 17; C. & M. Dig., § 1900; Pope's Dig., § 2417; A.S.A. 1947, § 12-1204.

14-15-704. Appointment of another surveyor.

In all cases where the county surveyor may be interested in any survey which is required to be made by any court, the court shall direct the survey to be made by some competent person. The person so appointed shall have power to administer the necessary oaths to the chainmen, and shall return the survey under oath, and shall be entitled to the same fees for his services as the county surveyor would be entitled to receive for similar services.

History. Rev. Stat., ch. 40, § 19; C. & M. Dig., § 1902; Pope's Dig., § 2419; A.S.A. 1947, § 12-1206.

14-15-705. Survey of lands sold for taxes.

It shall be the duty of the county surveyor to survey all lands sold for taxes in his county on the application of any person producing to him a certificate of purchase from the officer by whom the lands may have been sold.

History. Rev. Stat., ch. 40, § 4; C. & M. Dig., § 1887; Pope's Dig., § 2404; A.S.A. 1947, § 12-1207.

14-15-706. Survey of public land.

(a) Any person who may have entered any of the public lands of the United States, having received from the proper officer a certificate of entry and desiring his lands surveyed and laid off according to the certificate, may apply to the county surveyor for that purpose, and the county surveyor shall make a survey in accordance with the entry.

(b) Before the county surveyor shall proceed to survey any such tract of land, he shall be satisfied that all persons owning lands adjoining and who may be, in any manner, affected by the survey have been notified to attend and be present at the surveying thereof.

(c) It shall be the duty of each county surveyor, when subdividing any section or part of a section of land originally surveyed under the authority of the United States, to make his survey conformably to the original survey.

History. Rev. Stat., ch. 40, §§ 6-8; C. & M. Dig., §§ 1889-1891; Pope's Dig., §§ 2406-2408; A.S.A. 1947, §§ 12-1208 — 12-1210.

CASE NOTES

ANALYSIS

Applicability.
Errors.
Evidence.

Applicability.

Where facts are such as to lead to the conclusion that a government survey, if made at all, was made on paper only, this section does not apply. *Luther v. Walker*, 175 Ark. 846, 1 S.W.2d 6 (1927).

Errors.

Where the official government survey establishes the section and quarter-section corners, the sections will stand though erroneous, but a deficiency or over-

plus in a quarter section will be apportioned among the subdivisions of which it is composed. *Tolson v. Southwestern Imp. Ass'n*, 97 Ark. 193, 133 S.W. 603 (1911).

Evidence.

The plaintiffs in a boundary line dispute failed to satisfy their burden of persuasion by a preponderance of the evidence where their surveyor did not consult original field notes before making his survey and the survey offered in evidence by the defendants was a certified copy of a survey by the county surveyor and was consistent with two earlier surveys by two previous county surveyors. *Forshee v. Canard*, 488 F. Supp. 521 (E.D. Ark. 1980).

14-15-707. Establishment of corners.

For the purpose of perpetuating every survey, the surveyor shall establish his corners by taking bearings on trees and noting particularly their course and distance from the corner. When there are no trees within a reasonable distance, he shall perpetuate his corners by erecting mounds of turf, at least two and one-half feet (2½') at the base and two feet (2') high. In lieu of mounds, stones may be planted in the ground, to a depth not less than twelve inches (12"), which shall not be less than eighteen inches (18") long, eight inches (8") wide, and three inches (3") thick. The stones shall be described in the field book.

History. Rev. Stat., ch. 40, § 9; C. & M. Dig., § 1892; Pope's Dig., § 2409; A.S.A. 1947, § 12-1211.

14-15-708. Calculating tract contents.

All calculations to ascertain the content of any tract of land by any county surveyor or other person shall be made by differences of latitude and departure.

History. Rev. Stat., ch. 40, § 20; C. & M. Dig., § 1903; Pope's Dig., § 2420; A.S.A. 1947, § 12-1212.

14-15-709. Instruments required — Record book.

(a) It shall be the duty of each county surveyor to furnish himself with a compass of approved construction, having a nonius division; also, a two-pole chain of fifty (50) links, and a well-bound book, in which he shall carefully and legibly record and note down every survey made by him, giving the name of the person the survey of whose lands is recorded, and describing as near as practicable, the metes and bounds of the tract, and noting the date on which the survey was made.

(b) The record book required by this section to be kept by each county surveyor shall be furnished at the expense of the county.

(c) The record shall be subject to the inspection of every person who may deem himself interested in the land record.

History. Rev. Stat., ch. 40, §§ 10, 11, 21; C. & M. Dig., §§ 1893, 1894, 1904; Pope's Dig., §§ 2410, 2411, 2421; A.S.A. 1947, §§ 12-1215 — 12-1217.

40, § 22, provided that the provisions of the act should extend to all county surveyors who had previously been, as those who were thereafter, elected.

Publisher's Notes. Revised Stat., ch.

CASE NOTES

Cited: Sherrin v. Coffman, 143 Ark. 8, 219 S.W. 348 (1920).

14-15-710. Delivery of records to successor.

(a) It shall be the duty of the county surveyor, or other person having the official record of the surveyor in his possession, to deliver up the record to his successor whenever he may be applied to for that purpose.

(b) If the surveyor, or the person having the possession of such record, shall refuse to deliver it to such successor when demanded, he shall forfeit and pay the sum of one dollar (\$1.00) per day for every day he may retain it after demanded, to be recovered by a civil action before any justice of the peace, in the name of any person who may sue for it, one-half ($\frac{1}{2}$) to the use of the person suing and one-half ($\frac{1}{2}$) to the use of the county.

History. Rev. Stat., ch. 40, §§ 12, 13; §§ 2412, 2413; A.S.A. 1947, §§ 12-1218, C. & M. Dig., §§ 1895, 1896; Pope's Dig., 12-1219.

14-15-711. Conclusiveness of official survey.

No act or record by any county surveyor, or his deputy, shall be conclusive, but may be reviewed by any competent tribunal in any case where the correctness thereof may be disputed.

History. Rev. Stat., ch. 40, § 15; C. & M. Dig., § 1898; Pope's Dig., § 2415; A.S.A. 1947, § 12-1221.

CASE NOTES

Prima Facie Evidence.

Preponderance of evidence, including survey by a duly qualified surveyor, overcomes the prima facie evidence of the correctness of a boundary line established by the introduction of the certificate of survey by a county surveyor. *Mason v. Peck*, 239 Ark. 208, 388 S.W.2d 84 (1965).

A state statute specifying that a certain record shall be prima facie evidence is binding upon a federal court, where the statute concerns not merely the admissibility of evidence (the certified copy of the county surveyor's record would be admissible whether such a state statute existed or not), but rather the legal effect of a certain type of survey in a case involving the title to land, traditionally a matter of state concern. *Forshee v. Canard*, 488 F. Supp. 521 (E.D. Ark. 1980).

If a certified copy of the official record of

a county surveyor, as distinguished from his testimony only or a mere plat signed by him, is offered in evidence, then the corners and lines shown therein are established, unless the other party shows, by a preponderance of the evidence, that the location of the true line is other than as shown in the survey thus certified. *Forshee v. Canard*, 488 F. Supp. 521 (E.D. Ark. 1980).

The plaintiffs in a boundary line dispute failed to satisfy their burden of persuasion by a preponderance of the evidence where their surveyor did not consult original field notes before making his survey and the survey offered in evidence by the defendants was a certified copy of a survey by the county surveyor and was consistent with two earlier surveys by two previous county surveyors. *Forshee v. Canard*, 488 F. Supp. 521 (E.D. Ark. 1980).

14-15-712. Admissibility of certified copy.

A certified copy of the record of any county surveyor, under the hand of the surveyor, shall be admitted as prima facie evidence in any court of record in this state.

History. Rev. Stat., ch. 40, § 14; C. & M. Dig., § 1897; Pope's Dig., § 2414; A.S.A. 1947, § 12-1220.

Cross References. Surveys admissible in evidence, § 16-46-103.

RESEARCH REFERENCES

Ark. L. Rev. Documentary Evidence — Arkansas, 15 Ark. L. Rev. 79.

CASE NOTES

ANALYSIS

Certified copy.
Instructions.
Prima facie evidence.
Unofficial surveys.

Certified Copy.

Where plaintiff introduced into evidence a plat with signature of surveyor thereon, defendant did not have burden of proof to show plat was erroneous, since plat introduced was not a certified copy of official record kept by the surveyor. *Horn v. Hays*, 219 Ark. 450, 243 S.W.2d 3 (1951).

Instructions.

In case involving dispute over boundary line in which county surveyor testified as to the actual survey line, an instruction by the court, which stated that testimony of surveyor and documentary evidence introduced by him along with stipulation of the parties constituted prima facie evidence of the correct line as it appears from the survey unless the defendant could prove by a preponderance of evidence a different line, was not erroneous. *Polk v. Willey*, 220 Ark. 506, 248 S.W.2d 693 (1952).

Prima Facie Evidence.

A certified copy of an official survey made by a county surveyor is prima facie correct, but any duly qualified surveyor may testify as to its correctness. *Russell v. State*, 97 Ark. 92, 133 S.W. 188 (1910).

Where a party to a controversy over a certain boundary line introduces the surveyor's record in evidence making a prima facie case, it becomes the duty of the other party to show that the location of the true line is otherwise than as shown in the survey thus certified. *Buffalo Zinc & Copper Co. v. McCarty*, 125 Ark. 582, 189 S.W. 355 (1916).

Oral testimony as to location of property line is properly excluded. *Mason v. Mason*, 167 Ark. 304, 267 S.W. 772 (1925).

A state statute specifying that a certain record shall be prima facie evidence is binding upon a federal court, where the statute concerns not merely the admissibility of evidence (the certified copy of the county surveyor's record would be admissible whether such a state statute existed or not), but rather the legal effect of a certain type of survey in a case involving the title to land, traditionally a matter of state concern. *Forshee v. Canard*, 488 F. Supp. 521 (E.D. Ark. 1980).

If a certified copy of the official record of a county surveyor, as distinguished from his testimony only or a mere plat signed by him, is offered in evidence, then the corners and lines shown therein are established, unless the other party shows, by a preponderance of the evidence, that the location of the true line is other than as shown in the survey thus certified. *Forshee v. Canard*, 488 F. Supp. 521 (E.D. Ark. 1980).

The plaintiffs in a boundary line dispute failed to satisfy their burden of persuasion by a preponderance of the evidence where their surveyor did not consult original field notes before making his survey and the survey offered in evidence by the defendants was a certified copy of a survey by the county surveyor and was consistent with two earlier surveys by two previous county surveyors. *Forshee v. Canard*, 488 F. Supp. 521 (E.D. Ark. 1980).

Unofficial Surveys.

A conviction for the wrongful cutting of timber was set aside where the evidence showed that an unofficial surveyor had surveyed the land and plainly marked the boundaries, but a subsequent official survey showed that the unofficial survey was less favorable to the defendant than the official survey. *Sawyer & Austin Lumber Co. v. State*, 75 Ark. 309, 87 S.W. 431 (1905).

SUBCHAPTER 8 — COUNTY TREASURERS

SECTION.

- 14-15-801. [Repealed.]
- 14-15-802. Office.
- 14-15-803. Counties having two judicial districts.
- 14-15-804. Appointment of deputies.

SECTION.

- 14-15-805. Duties generally.
- 14-15-806. Neglect or refusal to pay warrant.
- 14-15-807. Accounting of moneys received and disbursed.

SECTION.

14-15-808. [Repealed.]

14-15-809. Resignation, removal, or death.

SECTION.

14-15-810. Relief from liability.

14-15-811. Continuing education — Board and fund.

Cross References. Fees — County treasurers, § 21-6-302.

Sale of county property generally, § 14-16-105.

Effective Dates. Acts 1877, No. 15, § 4: effective on passage.

Acts 1907, No. 190, § 7: effective on passage.

Acts 1989 (1st Ex. Sess.), No. 178, § 6: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the

effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

14-15-801. [Repealed.]

Publisher's Notes. This section, concerning eligibility, was repealed by Acts 1993, No. 1279, § 1. The section was de-

rived from Rev. Stat., ch. 41, § 39; A.S.A. 1947, § 12-1318.

14-15-802. Office.

County treasurers shall keep their offices at their respective county sites.

History. Acts 1877, No. 15, § 3, p. 10; C. & M. Dig., § 1909; Pope's Dig., § 2426; A.S.A. 1947, § 12-1304.

14-15-803. Counties having two judicial districts.

The treasurer shall keep in his office at each county site in counties having two (2) judicial districts, except Prairie, Woodruff, Lawrence, Yell, and Logan, the funds belonging to the school districts and road districts of the respective judicial districts for the purpose of paying warrants drawn thereon.

History. Acts 1907, No. 190, § 6, p. 446; C. & M. Dig., §§ 2044, 8360; Pope's Dig., §§ 2591, 10956; A.S.A. 1947, § 12-1305; Acts 1991, No. 183, § 1; 1995, No. 354, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-

207, this section is set out above as amended by Acts 1995, No. 354. Acts 1995, No. 334, § 1 purported to repeal this section.

Amendments. The 1995 amendment inserted "Yell."

14-15-804. Appointment of deputies.

(a) Appointment of deputies shall be in writing, signed by the county treasurer, and approved by the county court, or judge thereof in vacation.

(b) The approval shall be endorsed on the appointment and recorded in the recorder's office of the county.

(c) A deputy shall possess all the powers of the treasurer.

History. Acts 1883, No. 42, §§ 2-4, p. Dig., §§ 2428-2430; A.S.A. 1947, §§ 12-65; C. & M. Dig., §§ 1911-1913; Pope's 1307 — 12-1309.

14-15-805. Duties generally.

(a) It shall be the duty of each county treasurer to receive and give receipt for all moneys payable into the county treasury and to pay and disburse the moneys on warrants or checks drawn by order of the county court.

(b) It shall be the duty of each county treasurer to refuse payment of any warrant or check that would cause a deficit balance in any "special revenue" account without an appropriated transfer of general funds to cover the deficit.

(c) It shall be the duty of each county treasurer to maintain a positive "general fund" balance. The general fund shall include county general and any other ledger account on the treasurer's books accruable to county general. The treasurer shall refuse payment of any warrant or check that would cause a deficit balance of the general fund in aggregate.

History. Special Acts of 1923, No. 240, § 3; Rev. Stat., ch. 41, § 5; C. & M. Dig., § 1914; Pope's Dig., § 2431; A.S.A. 1947, § 12-1310; Acts 1993, No. 200, § 1.

Publisher's Notes. This section was amended as to certain counties by Special Acts of 1923, p. 487.

Amendments. The 1993 amendment added (b) and (c); and, in (a), inserted "to" following "county treasury and" and "or checks" following "warrants."

CASE NOTES

ANALYSIS

Legal actions.

Ministerial duties.

Legal Actions.

Treasurer is authorized to sue a bank to recover public funds that he has deposited which the bank has to pay on demand. Warren v. Nix, 97 Ark. 374, 135 S.W. 896 (1911).

Ministerial Duties.

County treasurer is a ministerial officer not vested with discretion in payment and disbursement of county funds, but acts only at the order of the county court. Mackey v. McDonald, 255 Ark. 978, 504 S.W.2d 726 (1974).

14-15-806. Neglect or refusal to pay warrant.

(a) If any county treasurer shall neglect or refuse to pay any warrant or check drawn on him by order of the county court of his county, having cash available in the fund on which the warrant or check is drawn, he shall forfeit and pay to the holder of the warrant four (4) times the amount thereof.

(b) The forfeiture may be recovered by a civil action in the name of the party aggrieved against the treasurer and his securities, and the treasurer shall be deemed guilty of a misdemeanor in office and upon conviction shall be removed from office.

History. Rev. Stat., ch. 41, §§ 10, 11; C. & M. Dig., §§ 1920, 1921; Pope's Dig., § 2437; A.S.A. 1947, §§ 12-1311, 12-1312; Acts 1993, No. 200, § 2.

Amendments. The 1993 amendment, in (a), inserted "or check" following "warrant," and substituted "cash available in

the fund on which the warrant or check is drawn" for "in his hands money applicable thereto."

Cross References. Removal or suspension of local officers, § 21-12-301 et seq.

14-15-807. Accounting of moneys received and disbursed.

(a) A county treasurer shall keep a true and just account of all moneys received and disbursed and a regular abstract of all warrants paid by him.

(b) A treasurer shall make duplicate receipts in favor of the proper person for all moneys paid into the treasury and keep the books, papers, and money pertaining to his office at all times ready for the inspection of the county court or the presiding judge thereof.

(c) A treasurer shall furnish the county court with an account of the receipts and expenditures of the county not previously accounted for at each term of the county court, if required.

History. Rev. Stat., ch. 41, §§ 6-8; C. & M. Dig., §§ 1915-1917; Pope's Dig., §§ 2432-2434; A.S.A. 1947, §§ 12-1313 — 12-1315.

Cross References. County clerks — Duties as to accounts, § 16-20-402.

Fraudulent statement of accounts by collecting officer, § 26-2-111.

Loan or use of public money by officials, § 26-2-103.

14-15-808. [Repealed.]

Publisher's Notes. This section, concerning annual settlements, was repealed by Acts 1993, No. 1279, § 1. The section was derived from Acts 1873, No. 124,

§ 189, p. 294; C. & M. Dig., §§ 1918, 10174; Pope's Dig., §§ 2435, 13955; A.S.A. 1947, § 12-1316.

14-15-809. Resignation, removal, or death.

If he resigns, is removed from office, or dies, a county treasurer, or his executor or administrator, shall immediately make his settlement and deliver to his successor in office all things pertaining to the office, together with all the moneys belonging to the county.

History. Rev. Stat., ch. 41, § 9; C. & M. Dig., § 1919; Pope's Dig., § 2436; A.S.A. 1947, § 12-1317

CASE NOTES**Settlement.**

When the administrator of a deceased treasurer makes settlement with the county court pursuant to this section, the settlement is binding upon the sureties

upon the treasurer's bond, although they were not parties to the proceeding in county court. *Wycough v. State*, 50 Ark. 102, 6 S.W. 598 (1887).

14-15-810. Relief from liability.

In all cases where any funds in the hands of any county treasurer of this state have been lost or become unavailable by reason of the insolvency of any bank in which the funds were deposited, and not through defalcation of the county treasurer, the county treasurers and their bondsmen, in cases where the bondsmen have not become sureties on account of the payment of a cash consideration, and in such cases only, are released and relieved from any and all liability for loss of the funds.

History. Acts 1935, No. 16, § 1.

14-15-811. Continuing education — Board and fund.

(a) There is created the County Treasurer's Continuing Education Board which shall be composed of the following six (6) members:

(1) Four (4) members of the County Treasurer's Association, designated by the County Treasurer's Association;

(2) One (1) member designated by the Association of Arkansas Counties; and

(3) The Auditor of State or a person designated by the Auditor of State.

(b)(1) It shall be the responsibility of the County Treasurer's Continuing Education Board to establish a continuing education program for county treasurers of the various counties in the state. This program shall be designed to better equip persons elected to serve as county treasurers to carry out their official responsibilities in an effective and efficient manner. The program shall include requirements and procedures for an effective certification program for county treasurers.

(2) It shall also be the responsibility of the board to disburse any funds made available to it from the County Treasurer's Continuing

Education Fund to establish and maintain a continuing education program and a certification program for county treasurers.

(c) There is created on the books of the State Treasurer, State Auditor, and the Chief Fiscal Officer of the State, the County Treasurer's Continuing Education Fund. The quorum court of each county shall annually appropriate and pay into the County Treasurer's Continuing Education Fund in the State Treasury the sum of three hundred dollars (\$300) from fees of the office of county treasurer. If any quorum court shall fail or refuse to appropriate and pay over the funds to the County Treasurer's Continuing Education Fund in the State Treasury, the State Treasurer shall withhold funds from the county aid due to the county and shall credit the funds to the County Treasurer's Continuing Education Fund.

(d) The funds in the County Treasurer's Continuing Education Fund shall be used exclusively for the establishment and operation of a continuing education program for county treasurers and for paying the meals, lodging, registration fees, and mileage at the rate prescribed in state travel regulations of county treasurers who attend the continuing education program.

History. Acts 1987, No. 944, §§ 1-3;
1989 (1st Ex. Sess.), No. 178, § 2.

SUBCHAPTER 9 — COUNTY CLERKS

SECTION.

14-15-901. Records — Multiple judicial districts.

Effective Dates. Acts 1907, No. 190, § 7: effective on passage. Acts 1919, No. 507, § 2: approved Mar. 28, 1919. Emergency declared.

14-15-901. Records — Multiple judicial districts.

(a) In counties having two (2) judicial districts, it shall be the duty of the county clerk to keep at each county site, in addition to the records now required by law to be kept, the following records:

- (1) Record of marks and brands;
- (2) Record of incorporations;
- (3) Record of estrays;
- (4) Record of advertisements and sale of delinquent lands;
- (5) Record of lands sold to the state; and
- (6) Record of lands sold to individuals.

(b) It shall be the duty of the county courts of such counties to immediately purchase such records for the use of the various counties as are required by this section, and all other expenses made necessary by the provisions of this section shall be borne by the respective counties embraced in this section.

(c) The provisions of this section shall not apply to Prairie, Woodruff, and Lawrence counties.

History. Acts 1907, No. 190, §§ 1, 2, 7, p. 446; 1911, No. 94, § 1; 1919, No. 507, § 1; C. & M. Dig., §§ 2039, 2040, 8355, 8356, 8361; Pope's Dig., §§ 2586, 2587, 10951, 10952, 10957; A.S.A. 1947, §§ 16-301 — 16-303.

Cross References. Brands and marks of animals generally, § 2-34-101 et seq.

Drivers — Certificate of compliance, § 2-34-303.

Marriage licenses — Issuance of certificate by clerk and duty of clerk upon return of license, §§ 9-11-203, 9-11-220.

Record of livestock running at large or straying, § 2-38-110.

Recording personalty in only one district, § 14-2-101.

CASE NOTES

Failure to Record.

Failure to record delinquent tax list and publication of notice of sale are not mere irregularities, but matters of substance,

rendering tax sale invalid beyond the features of a curative act. *Carle v. Gehl*, 193 Ark. 1061, 104 S.W.2d 445 (1937).

SUBCHAPTER 10 — COUNTY COLLECTORS

SECTION.

14-15-1001. Continuing education — Board and fund.

14-15-1001. Continuing education — Board and fund.

(a) There is hereby created the County Collector's Continuing Education Board which shall be composed of the following six (6) members:

(1) Four (4) members of the County Collector's Association, designated by the County Collector's Association;

(2) One (1) member designated by the Association of Arkansas Counties; and

(3) The Auditor of State or a person designated by the Auditor of State.

(b)(1) It shall be the responsibility of the County Collector's Continuing Education Board to establish a continuing education program for county collectors and sheriff/collectors of the various counties in the state. This program shall be designed to better equip persons elected to serve as county collectors and as sheriff/collectors to carry out their official responsibilities in an effective and efficient manner. The program shall include requirements and procedures for an effective certification program for county collectors.

(2) It shall also be the responsibility of the board to disburse any funds made available to it from the County Collector's Continuing Education Trust Fund to establish and maintain a continuing education program and a certification program for county collectors.

(c)(1) There is created on the books of the State Treasurer, Auditor of State, and the Chief Fiscal Officer of the State, the County Collector's Continuing Education Trust Fund. The quorum court of each county

shall annually appropriate and pay into the County Collector's Continuing Education Trust Fund in the State Treasury the sum of three hundred dollars (\$300) from fees of the office of county collector. If any quorum court shall fail or refuse to appropriate and pay over the funds to the County Collector's Continuing Education Trust Fund in the State Treasury, the State Treasurer shall withhold funds from the county aid due to the county and shall credit the funds to the County Collector's Continuing Education Trust Fund.

(2) The trust fund shall consist of all moneys required to be paid in annually as set out herein, all interest earned from the investment of fund balances, and any remaining fund balances carried forward from year to year.

(d) The funds in the County Collector's Continuing Education Trust Fund shall be used exclusively for the establishment and operation of a continuing education program for county collectors and sheriff/collectors and for paying the meals, lodging, registration fees, and mileage at the rate prescribed in state travel regulations of county collectors and sheriff/collectors who attend the continuing education programs.

History. Acts 1989, No. 673, §§ 1-3.

CHAPTER 16
POWERS OF COUNTIES GENERALLY

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. PUBLIC RECREATION AND PLAYGROUNDS.
- 3. PUBLIC PROPERTY FOR PROCESSING CRUDE BIOGENIC GASES.
- 4. AREAS ADJACENT TO SHOPPING CENTERS.
- 5. REGULATION OF USE OF FIREARMS AND ARCHERY EQUIPMENT.
- 6. RENT CONTROL PREEMPTION.
- 7. REGULATION OF DOGS AND CATS.

RESEARCH REFERENCES

Am. Jur. 4 Am. Jur. 2d, Animals, § 24. 22A Am. Jur. 2d, Dec. Judg., § 157. 56 Am. Jur. 2d, Mun. Corp., §§ 98 et seq., 193-230, 423-578, 848.	C.J.S. 20 C.J.S., Counties, §§ 49, 50 and 165 et seq. UALR L.J. Survey, Water and Environ- mental Law, 12 UALR L.J. 665.
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SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 14-16-101. Actions on behalf of counties.
- 14-16-102. Rights under contracts.
- 14-16-103. Deeds, etc., to county.
- 14-16-104. Conveyances from federal gov-
ernment.

SECTION.

- 14-16-105. Sale of county property gener-
ally.
- 14-16-106. Sale of surplus property.
- 14-16-107. Sale of realty to certain orga-
nizations.

SECTION.

- 14-16-108. Sale or lease of county hospital to municipality.
- 14-16-109. Lease of county lands to municipality.
- 14-16-110. Lease of county property to educational institutions.
- 14-16-111. Development of port facilities.

SECTION.

- 14-16-112. Flood control.
- 14-16-113. Sale proceeds paid into county road fund.
- 14-16-114. Financial aid.
- 14-16-115. Resident bidding preference limitation.

Cross References. Jurisdiction of county courts over county affairs, Ark. Const., Art. 7, § 28.

Supervisor of county courts and county, local and municipal boards or officers exercised by circuit courts, § 16-13-203.

Effective Dates. Acts 1879, No. 16, § 4: effective on passage.

Acts 1949, No. 64, § 5: approved Feb. 8, 1949. Emergency clause provided: "Whereas, the United States is willing to convey lands for hospital purposes and,

"Whereas, the erection of county hospitals vitally affects the public health needs of the people of the State of Arkansas and this Act being necessary to preserve the public peace, health and safety of the inhabitants of the State of Arkansas, an emergency is hereby declared and this Act shall be in full force and effect from and after its passage."

Acts 1951, No. 26, § 4: Jan. 30, 1951. Emergency clause provided: "It being found and determined that there are counties owning real and personal property not needed for use by the county, and that the same is necessary to be used by nonprofit, nonsectarian educational institutions, which, because of the lack thereof, are unable properly to provide adequate facilities necessary for education and instruction, the passage of this Act is found necessary for the preservation of the public peace, health and safety, and an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval."

Acts 1955, No. 73, § 2: Feb. 17, 1955. Emergency clause provided: "Whereas, the United States Government has made available funds to be used in the State of Arkansas for flood control purposes, and Whereas, it is necessary that Counties be given the authority to acquire land in order that such Federal funds may be used, and Whereas, it is important to the protection of the lives and property of the people of this State that such flood control

projects be immediately commenced, Now Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1957, No. 37, § 2: Feb. 12, 1957. Emergency clause provided: "It being found and determined that there are counties in this state owning real and personal property not needed for use by the county, and that the same is necessary to be used by lawfully incorporated, nonprofit, nonsectarian Boys' Clubs or Girls' Clubs, in addition to educational institutions, which because of the lack thereof, are unable properly to provide adequate facilities for the welfare, betterment and recreation of boys or girls, the passage of this act having been found necessary for the public peace, health and safety, an emergency is hereby declared to exist, and this act shall be in full force and effect from and after its approval."

Acts 1963, No. 213, § 3: Mar. 8, 1963. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of this Act will be of great benefit to the various counties in this State by making it possible for such counties to receive better value for used county equipment and other property which the county desires to trade in when purchasing new equipment or property, and that this Act is immediately necessary to permit said counties to make such savings. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1965, No. 115, § 6: Feb. 23, 1965. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain counties of this State have county-owned hospitals which are

vitally needed by municipalities in such counties for use as municipal hospitals and/or nursing homes; and, whereas, the General Assembly determines that it is immediately necessary for the preservation of the public health in such communities that legislation be immediately passed to authorize such sales or leases, Now, Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 150, § 3: Feb. 22, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that there are certain counties in this State which are partially bordered by navigable streams or through which navigable streams flow, including Chicot County, that wish to establish and operate river port facilities on such navigable streams; that the establishment and operation of such facilities would be advantageous to and would promote industrial development in such county; that this Act is designed to authorize any such county, alone or in conjunction with another county or municipality as authorized in Act 310 of 1959, to establish, equip and operate such port facility and should be given effect immediately in order that any county desiring to take advantage of the provisions of this Act may do so immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 444, § 3: Mar. 29, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that under present law, counties in this State have the authority to sell lands to municipalities within the county but that there is presently no specific authority for a county to lease county-owned lands to municipalities; that certain counties in the State have lands which they desire to lease to various municipalities for particular uses and that the lease of such lands to municipalities by the county would be advantageous both to the county and to the leasing municipality and that this Act should be given effect immediately in order to permit the same. There-

fore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 192, § 3: Feb. 18, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is a dire need for legal authority for counties to lease lands to lawfully incorporated, quasipublic, non-profit, nonsectarian organizations; and that such authority to lease county lands to such organizations is immediately necessary to encourage and promote the further protection of the public peace, health, welfare and safety of the citizens of this State; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1980 (1st Ex. Sess.), No. 41, § 3: Jan. 25, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is unclear whether surplus county personal property can now be sold by public auction; that sale by public auction would in most cases result in receiving the highest sale price for surplus property and that this Act is immediately necessary to authorize such public auctions. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1980 (1st Ex. Sess.), No. 63, § 3: Feb. 4, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is unclear whether surplus county personal property can now be sold by public auction; that sale by public auction would in most cases result in receiving the highest sale price for surplus property and that this Act is immediately necessary to authorize such public auctions. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 732, § 5: Mar. 26, 1993. Emergency clause provided: "It is hereby

found and determined by the Seventy-Ninth General Assembly of the State of Arkansas that county governments in Arkansas are operating recycling programs for solid waste; that county recycling programs generate recyclable materials which can technically be considered personal property of the county; that Arkansas law regulates the manner in which personal property of the county can be sold; and that, since the recycling markets are very time sensitive and price con-

scious, county government recycling programs should be exempt for these restrictions and procedures. Therefore, in order to permit county government to sell recyclable materials more rapidly and competitively, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

14-16-101. Actions on behalf of counties.

When any county has any demand against any persons or corporations, suit thereon may be brought in the name of the state for the use of the county. In all such actions, all costs and expenses not recovered from the defendant shall be paid by the county.

History. Acts 1879, No. 16, § 3, p. 13; C. & M. Dig., § 2045; Pope's Dig., § 2596; A.S.A. 1947, § 17-302.

Cross References. Claims against counties, § 14-23-101 et seq.

CASE NOTES

ANALYSIS

Applicability.

Actions allowed.

Costs and expenses.

Applicability.

This section had no applicability to a cause in equity that accrued prior to its passage. *Griffith v. Sebastian County*, 49 Ark. 24, 3 S.W. 886 (1887).

Actions Allowed.

A suit could be prosecuted in the name of the state, for the use of a county, to annul and cancel an illegal and fraudulent lease made by the county judge of the county property. *State ex rel. Garland County v. Baxter*, 38 Ark. 462 (1882).

The state could bring an action on a county treasurer's bond in which the obli-

gee was named for the use of a county for a defalcation of the treasurer. *State ex rel. Benton County v. Wood*, 51 Ark. 205, 10 S.W. 624 (1889).

Costs and Expenses.

Costs could not be taxed against a county in cases of failure of prosecution of suits by state against railroad companies for failure to maintain sufficient lights during nighttime on all their main line switches, the county not being a party to the suit, and in the absence of a statute making it so liable, could not properly be taxed with costs. *Chicot County v. Matthews*, 120 Ark. 505, 179 S.W. 1002 (1915).

Cited: *Wade v. Moody*, 255 Ark. 266, 500 S.W.2d 593 (1973).

14-16-102. Rights under contracts.

All notes, bonds, bills, contracts, covenants, agreements, or writings, made or to be made, whereby any person is, or shall be, bound to any county, or the commissioners of any county, or to any other person, in whatever form, for the payment of any debt or duty, or the performance of any matter or thing, to the use of any county, shall be valid and

effectual to all intents and purposes to vest in the county all rights, interests, and actions which would be vested in any individual if any such contract had been made directly to him.

History. Rev. Stat., ch. 35, § 6; C. & M. Dig., § 1975; Pope's Dig., § 2504; A.S.A. 1947, § 17-301.

14-16-103. Deeds, etc., to county.

All deeds, grants, and conveyances which are made and duly acknowledged and recorded as are other deeds of conveyance to any county, or to the commissioners of any county, or to any other person, by whatever form of conveyance, for the use and benefit of any county, for all intents and purposes shall be good and valid instruments for vesting in the county, in fee simple or otherwise, all such right, title, interest, and estate as the grantor in any such deed or conveyance had in the lands conveyed at the time of the execution of the instrument and was intended by that means to be conveyed.

History. Rev. Stat., ch. 35, § 4; C. & M. Dig., § 1948; Pope's Dig., § 2477; A.S.A. 1947, § 17-303.

CASE NOTES

ANALYSIS

Cancellation.
In fee simple or otherwise.

Cancellation.

A conveyance to a county under a mutual mistake will be canceled. *Griffith v. Sebastian County*, 49 Ark. 24, 3 S.W. 886 (1887).

In Fee Simple or Otherwise.

A county is authorized to take title to land "in fee simple or otherwise," and a deed accepted by the county conveys what was intended to be conveyed; a condition subsequent in a deed to a county does not convey a fee simple. *Jeffries v. State ex rel. Woodruff County*, 212 Ark. 213, 205 S.W.2d 194 (1947).

A county may acquire property for general county purposes by a deed that conveys less than the fee simple title; a condition subsequent in a deed to a county is in accordance with public policy and not void as against public policy. *Jeffries v. State ex rel. Woodruff County*, 212 Ark. 213, 205 S.W.2d 194 (1947).

In order to determine the validity of a condition subsequent in a deed to a county, the sources that must be consulted to determine an issue of public policy are the federal and state constitutions, the statutes, and court decisions. *Jeffries v. State ex rel. Woodruff County*, 212 Ark. 213, 205 S.W.2d 194 (1947).

14-16-104. Conveyances from federal government.

(a)(1) Any and all counties of the State of Arkansas are authorized and empowered to accept conveyances of real estate from the federal government, or any authorized agency thereof, whether that conveyance contains reservations to oil, mineral, or fissionable material rights in the United States or not, and subject to such terms and conditions as the federal government, or an agency thereof, may reasonably require.

(2) Counties are authorized to accept conveyances containing reversion clauses providing for reversion of real estate to the federal government in case the real estate ceases to be used for the purposes for which conveyed.

(b) The word "conveyance" as used herein shall be construed to refer to either quit-claim or warranty deeds.

(c) The provisions of this section shall apply only to conveyances from the United States or from any authorized agency of the federal government.

History. Acts 1949, No. 64, §§ 1-3;
A.S.A. 1947, §§ 17-310 — 17-312.

14-16-105. Sale of county property generally.

(a) The county court of each county shall have power and jurisdiction to sell and cause to be conveyed any real estate or personal property belonging to the county and to appropriate the proceeds of the sale for the use of the county by proceeding in the manner set forth in this section.

(b)(1) Whenever the county judge of any county shall consider it advisable and to the best interest of the county to sell and convey any real or personal property belonging to the county, he shall cause an order to be entered in the county court setting forth:

(A) A description of the property to be sold;

(B) The reason for the sale; and

(C) An order directing the county assessor to cause the property to be appraised at its fair market value and to certify his appraisal thereof to the county court within a time to be specified in the order.

(2) A certified copy of the order shall be delivered to the county assessor by the county clerk, and the county clerk shall certify the date of the delivery of the copy on the margin of the record where the order is recorded.

(3) An order and the procedures prescribed in this section shall not be required for any sale by the county of any materials separated, collected, recovered, or created by a recycling program authorized and operated by the county. However, the county judge shall maintain a record of the recyclable materials sold, whether they were sold at public or private sale, a description of the recyclables sold, the name of the purchaser, and the terms of the sale. All the proceeds of the sale shall be deposited with the county treasurer.

(4) An order and the procedures described in this section shall not be required for any conveyance by the county of a conservation easement as described in § 15-20-401 et seq. However, no such conveyance shall be made unless authorized by a majority vote of the quorum court.

(c)(1) Upon receipt of the certified copy of the order, the county assessor shall view the property described in the order and shall cause it to be appraised at its fair market value.

(2) Within the time specified in the order, the assessor shall file with the county clerk his written certificate of appraisal of the property.

(d)(1) If the appraised value of the property described in the order is less than the sum of five hundred dollars (\$500), the property may thereafter be sold and conveyed by the county judge, either at public or private sale, for not less than three-fourths ($\frac{3}{4}$) of the appraised value as shown by the certificate of appraisal filed by the assessor.

(2)(A) When the sale has been completed, the county court shall enter its order approving the sale.

(B) The order shall set forth:

(i) The description of the property sold;

(ii) The name of the purchaser;

(iii) The terms of the sale; and

(iv)(a) That the proceeds of the sale have been deposited with the county treasurer; and

(b) The funds to which the proceeds were credited by the county treasurer.

(e)(1)(A) If the appraised value of the property to be sold exceeds the sum of five hundred dollars (\$500), the county judge may sell the property to the highest and best bidder upon sealed bids received by the judge. The sheriff, the treasurer, and the circuit clerk of the county in which the property is to be sold shall constitute a board of approval for such sales, and the judge shall be the ex officio chairman of the board without a vote.

(B) Such property, when it exceeds the appraised value of five hundred dollars (\$500), shall not be sold for less than three-fourths ($\frac{3}{4}$) of its appraised value as determined by the certificate of the assessor.

(2)(A) Notice of the sale shall be published for two (2) consecutive weekly insertions in some newspaper published and having a general circulation in the county.

(B) The notice shall specify:

(i) The description of the property to be sold;

(ii) The time and place for submitting written bids; and

(iii) The appraised value of the property to be sold.

(C) The notice shall be dated and signed by the judge.

(3) The judge shall have the right to reject any and all bids received by him pursuant to the notice.

(4)(A) When a bid has been accepted for the property by the judge, he, as chairman of the approval board, shall immediately call a meeting of the board, and the proposals to sell at the acceptable bid shall be submitted to the board for its approval.

(B)(i) If a majority of the board approves the sale, then the judge may sell and convey the property to the highest bidder;

(ii) When the sale has been so approved and completed, the county court shall enter an order approving the sale, which shall set forth the details of the sale as provided in subsection (d) of this section.

(f)(1)(A) Any sale or conveyance of real or personal property belonging to any county not made pursuant to the terms of this section shall be null and void. Any taxpayer of the county may, within two (2) years

from the date a sale is consummated, bring an action to cancel the sale and to recover possession of the property sold. This action for the use and benefit of the county is to be taken in the chancery court of the county in which the sale is made or in any county where personal property so sold may be found.

(B) In the event the property is recovered for the county in the action, the purchaser shall not be entitled to a refund of the consideration paid by him for the sale.

(2) The procedures for sale and conveyance of county property set forth in this section shall not apply in these instances:

(A) Where personal property of the county is traded in on new or used equipment and credit approximating the fair market price of such personal property is given the county toward the purchase price of new equipment; or

(B) Where the sale of the personal property of the county involves the sale by the county of any materials separated, collected, recovered, or created by a recycling program authorized and operated by the county.

(C) Where the county is conveying a conservation easement as described in § 15-20-401 et seq. for any of the purposes enumerated in § 15-20-401 et seq. as the same may be amended from time to time.

(g) County hospitals constructed or maintained in whole or part by taxes approved by the voters shall not be sold unless the sale is approved by the majority of electors voting on the issue at a general or special election. This subsection is applicable to county hospitals constructed before and after July 20, 1987.

History. Acts 1945, No. 193, §§ 1-6; 1963, No. 213, § 1; A.S.A. 1947, §§ 17-304 — 17-309; Acts 1987, No. 448, § 1; 1993, No. 732, § 1; 1997, No. 1107, §§ 1, 2.

A.C.R.C. Notes. The punctuation in the 1997 amendment to this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

Amendments. The 1993 amendment

inserted (b)(3); divided (f)(3) into introductory language and (f)(2)(A); inserted (f)(2)(B); and made stylistic changes.

The 1997 amendment added (b)(4) and (f)(2)(C).

Cross References. Disposition of public use property, § 22-4-501.

Exercise of powers by county judge, § 14-14-1102.

Governmental Compliance Act, § 10-4-301 et seq.

CASE NOTES

ANALYSIS

Constitutionality.

Purpose.

Applicability.

Authority to sell.

"New".

Procedure for sale.

Void or voidable transactions.

Constitutionality.

The right of a county court to order sale of county property for such a consideration as it deemed proper did not conflict with Ark. Const., Art. 12, § 5. *Little Rock Chamber of Commerce v. Pulaski County*, 113 Ark. 439, 168 S.W. 848 (1914) (decision under prior law).

Purpose.

Purpose in providing procedure for sale of county property is to make public all dispositions of county property. *State ex rel. Miller County v. Eason*, 219 Ark. 36, 240 S.W.2d 36 (1951).

Applicability.

This section is superseded with respect to cases coming within the purview of § 14-164-201 et seq. relating to county industrial development revenue bonds. *Dumas v. Jerry*, 257 Ark. 1031, 521 S.W.2d 539 (1975).

Authority to Sell.

When agent for commissioner for sale of county property delivered the commissioner's deed to the purchaser without receiving the purchase price, he would be personally responsible to the county therefor. *Jacks v. State*, 44 Ark. 61 (1884) (decision under prior law).

When county court had authority to sell the property of the county, nothing short of fraud or grossly inadequate consideration as would amount to fraud would invalidate an order of the court in directing a conveyance. *Little Rock Chamber of Commerce v. Pulaski County*, 113 Ark. 439, 168 S.W. 848 (1914) (decision under prior law).

The consideration for the sale of county property could have been something other than money, and the county court in exercising its power could have determined what was to the best interests of the county. *Little Rock Chamber of Commerce v. Pulaski County*, 113 Ark. 439, 168 S.W. 848 (1914); *Washington County v. Lynn Shelton Post No. 27*, 201 Ark. 301, 144 S.W.2d 20 (1940) (decisions under prior law).

Former similar statute conferred power upon the county court to sell and convey property of the county not held in trust for specific purposes. *Washington County v. Lynn Shelton Post No. 27*, 201 Ark. 301, 144 S.W.2d 20 (1940) (decision under prior law).

"New".

The word "new," as used in the second clause of subdivision (f)(2), means new to the county, although it may be second-hand equipment; although this interpretation renders two different meanings of the term within the same sentence, it is nevertheless a reasonable and proper in-

terpretation of this section. *Robinson v. Clark Contracting Co.*, 992 F.2d 154 (8th Cir. 1993).

Procedure for Sale.

There was no substantial compliance by the county court with procedure for sale of county auto where it merely orally requested an appraisal by county assessor without entering an order describing the property to be sold for delivery by clerk to the assessor. *State ex rel. Miller County v. Eason*, 219 Ark. 36, 240 S.W.2d 36 (1951).

Allowance of claim by county court for purchase of new truck by county less allowance for old truck did not constitute ratification where county court had not substantially complied with law in having old truck appraised. *State ex rel. Miller County v. Eason*, 219 Ark. 36, 240 S.W.2d 36 (1951).

A judge has no right to sell county property without complying with this section. *Goodwin v. State*, 235 Ark. 457, 360 S.W.2d 490 (1962).

Void or Voidable Transactions.

Lease made contrary to former similar statute was held void for that and other reasons. *State ex rel. Garland County v. Baxter*, 50 Ark. 447, 8 S.W. 188 (1888) (decision under prior law).

County was not estopped to deny validity of sale of used truck owned by county in suit by taxpayer in behalf of county where procedure for appraisal of county property was not substantially complied with by the county court, since sale was void. *State ex rel. Miller County v. Eason*, 219 Ark. 36, 240 S.W.2d 36 (1951).

Car belonging to a county and sold to a dealer who, after expending money in repairs on it, resold it to the county, was properly excluded from lien on all other property purchased from the dealer, since this sale could have been found to be a part of an overall scheme to defraud the county with the dealer a part of that scheme. *Goodwin v. State*, 235 Ark. 457, 360 S.W.2d 490 (1962).

Where sale of county property was not contrary to provisions of this section, but was subject to attack for stifling of bidding, the sale was merely voidable, and equity could mold a remedy to fit the case. *State ex rel. Peevy v. Cate*, 236 Ark. 836, 371 S.W.2d 541 (1963).

Provision giving lessee of county property option to purchase was void, as was provision giving him right to any money received in any eminent domain proceeding, such provisions failing to comply with this section governing disposition of county property; however, with the two provisions stricken, the lease was valid. *State ex rel. Peevy v. Cate*, 236 Ark. 836, 371 S.W.2d 541 (1963).

Where taxpayer, before protesting sale of county property, allowed purchaser to expend over \$28,000 for improvements, to sell a small parcel to others who built a home thereon, and to receive proceeds from condemnation proceedings, resale would not be decreed unless or until purchaser failed to pay the actual value of the property at time of sale, with interest and costs. *State ex rel. Peevy v. Cate*, 236 Ark. 836, 371 S.W.2d 541 (1963).

The Arkansas Constitution vests exclusive jurisdiction over county property in the county court so that a deed executed by the county judge purporting to convey a tract of county property was void from the outset, and two-year limitation in subsection (f) on bringing taxpayer's suits to cancel improperly made conveyances, being curative in nature, could not remedy such a defect. *Maroney v. Universal Leasing Corp.*, 263 Ark. 8, 562 S.W.2d 77 (1978).

Cited: *Daniels v. City of Ft. Smith*, 268 Ark. 157, 594 S.W.2d 238 (1980); *Bell v. Crawford County*, 287 Ark. 251, 697 S.W.2d 910 (1985); *Dudley v. Little River County*, 305 Ark. 102, 805 S.W.2d 645 (1991).

14-16-106. Sale of surplus property.

(a) If it is determined by the county judge to be surplus, any personal or real property owned by a county may be sold at public auction to the highest bidder.

(b)(1) Notice of the public auction shall be published at least once a week for two (2) consecutive weeks in a newspaper having general circulation in the county.

(2) The notice shall specify the description of the property to be sold and the time and place of the public auction.

History. Acts 1980 (1st Ex. Sess.), No. 41, § 1; 1980 (1st Ex. Sess.), No. 63, § 1; A.S.A. 1947, § 17-322; Acts 1997, No. 364, § 1.

Amendments. The 1997 amendment inserted "or real" after "personal" in (a).

14-16-107. Sale of realty to certain organizations.

Whenever a portion of county lands are dedicated for the benefit of any lawfully incorporated, quasi-public, nonprofit, nonsectarian organizations including, but not limited to, medical clinics, that county real property may be sold to any buyer, upon the approval of the county judge and a two-thirds ($\frac{2}{3}$) vote of the quorum court of the county, without the necessity of soliciting for competitive bids.

History. Acts 1977, No. 750, § 1, A.S.A. 1947, § 17-321.

14-16-108. Sale or lease of county hospital to municipality.

(a) Any other law notwithstanding in this state, from and after the passage of this act, the county court of each county of the State of

Arkansas shall have the right to sell or lease any county-owned hospital, where there is no outstanding bonded indebtedness, upon such terms and conditions as the court may deem advisable for the best interests of the county, to any municipality located within the county.

(b)(1) Before any such sale or lease shall be entered into, the proposition shall be submitted to the county quorum court for approval or rejection.

(2) If a majority of the county quorum court voting thereon approves it, then the county court is authorized to execute other instruments that may be necessary to facilitate the sale or lease.

(c) Each sale or lease shall recite in the instrument of conveyance that should the municipality that has been granted the sale or lease of the county-owned hospital have any reason to discontinue to use it for hospital or nursing home purposes, then, in that event, the property shall revert back to the county, and title to the hospital shall be revested in the county.

History. Acts 1965, No. 115, §§ 1-3; A.S.A. 1947, §§ 17-316 — 17-318.

115, was signed by the Governor and became effective on February 23, 1965.

Publisher's Notes. In reference to the term "passage of this act," Acts 1965, No.

Cross References. Sale of county property generally, § 14-16-105.

14-16-109. Lease of county lands to municipality.

Any county in this state is authorized and empowered to lease any lands owned by the county to any municipality in the county, to be used for such purposes, subject to such restrictions, and for such consideration or compensation as shall be agreed upon by the contracting county and municipality.

History. Acts 1971, No. 444, § 1; A.S.A. 1947, § 17-319.

14-16-110. Lease of county property to educational institutions.

(a) Any lawfully incorporated nonprofit, nonsectarian educational institution; any lawfully incorporated nonprofit, nonsectarian boys' club or girls' club; or any lawfully incorporated quasi-public, nonprofit, nonsectarian organizations including, but not limited to, community mental health centers may petition the county court of any county or county district in which the institution, club, or organization is located to lease to it real or personal property belonging to the county for use by the institution, club, or organization.

(b)(1) Immediately upon the filing of the petition, the judge of the county court shall make an order fixing a time and place for a public hearing on the petition, notice of which order shall be given by the county clerk by publication one (1) time in a legal newspaper having a

bona fide legal circulation in the county or county district at least ten (10) days prior to the date fixed for the hearing.

(2)(A) The notice shall state the time of filing, the substance and purpose of the petition, and the time and place of hearing it.

(B)(i) The hearing shall be public, and all persons having an interest in the subject matter of the petition shall be entitled to be heard either in person or by attorney.

(ii) The hearing may be continued or adjourned to a further date, at the discretion of the court, but no further notice thereof by publication shall be required.

(c)(1) When satisfied from the petition or the evidence, if any, at the hearing that any real or personal property belonging to the county or county district is not, and in the future will not be, needed for use by the county and that the property may be used by any lawfully incorporated, quasi-public, nonprofit, nonsectarian institution, club, or organization in the county or county district, then the county court may order the lease of any property to the legally constituted directors or trustees of the institution, club, or organization for such time and upon such terms and conditions as the county court, in its discretion, shall find just, reasonable, and proper.

(2) The lease shall be signed and approved by the judge of the county court and by the directors or trustees of the institution, club, or organization and shall thereafter be and become a binding and valid contract when the order authorizing it shall have become final as provided in this section.

(3) Any such lease shall provide, in addition to any other terms as the county court shall deem reasonable and proper, that when the property shall cease to be used for the foregoing purposes, then the lease may be cancelled by the county court, after reasonable notice.

(d)(1)(A) When a hearing shall have been had pursuant to notice, as provided in this section, and an order granting or denying the petition shall have been made, the order shall become final and binding thirty (30) days after entry unless within that thirty (30) days any interested person or taxpayer of the county or county district shall appeal to the circuit court of the county or county district, the appeal from the order to be prosecuted and determined in the same manner as provided by law for appeals from the county court to the circuit court in municipal annexation cases.

(B) In like manner, the final judgment of the circuit court may be appealed by any interested person or taxpayer to the Supreme Court likewise as in such cases.

(2) Any appeal to the circuit court or from the circuit court to the Supreme Court must be taken and transcript lodged in the appellate court not later than thirty (30) days after the judgment or order of the court appealed from, and that appeal shall be advanced on motion of any party thereto.

(3) In the event of any appeal from the order of the county court as provided in this subsection, the order shall not become final until the appeal is finally determined.

History. Acts 1951, No. 26, §§ 1, 2; 1957, No. 37, § 1; 1975, No. 192, § 1; A.S.A. 1947, §§ 17-313, 17-314.

CASE NOTES

Appeals.

Appeal from action of county court denying petition for order nunc pro tunc because of loss of original order under subsections (a)-(c) granting lease to chamber of commerce by county was governed by general provisions of § 16-67-201 rather than subsection (d). *Piggott Junior*

Chamber of Commerce, Inc. v. Hollis, 242 Ark. 205, 412 S.W.2d 595 (1967).

Cited: *Piggott Junior Chamber of Commerce, Inc. v. Hollis*, 242 Ark. 205, 412 S.W.2d 595 (1967); *Hollis v. Piggott Junior Chamber of Commerce*, 248 Ark. 725, 453 S.W.2d 410 (1970).

14-16-111. Development of port facilities.

(a) Any county in this state which is partially bounded by a navigable stream or through which a navigable stream flows may independently, or jointly with another county, or with one (1) or more municipalities, establish, equip, maintain, and operate a river port or port facility at an appropriate place in the county. The county may issue bonds to provide funds for the construction and operation of the port facility in the manner and under the conditions and requirements as prescribed in §§ 14-186-401 — 14-186-417.

(b) The provisions of this section shall be supplemental to and shall not repeal, modify, or otherwise affect any other laws of this state relating to the establishment of port facilities by counties and cities in this state.

History. Acts 1971, No. 150, §§ 1, 2; A.S.A. 1947, §§ 17-320, 17-320n.

Cross References. Harbors and port facilities generally, § 14-186-101 et seq.

14-16-112. Flood control.

(a)(1) The counties of this state are authorized and empowered to enter upon, take, and hold any lands or interest, easement, or servitude therein, whether by purchase, grant, donation, devise, or otherwise, that may be necessary and proper for the location, construction, operation, repair, or maintenance of any floodway, reservoir, spillway, levee or diversion, or other flood control improvements.

(2)(A) In order to acquire such rights, easements, and servitudes, the counties are given the authority and power to condemn lands or interest therein for these purposes.

(B) In the event it becomes necessary for counties to exercise the right of eminent domain, condemnation proceedings shall be instituted and conducted in the same manner as provided in §§ 18-15-304 — 18-15-307.

(b) Nothing in this section shall ever be so construed or applied as to relieve the federal government of any liability or responsibility which it has assumed by the passage of the Flood Control Act of May 15, 1928, or the Flood Control Act of June 15, 1936, or any other existing law, or

any law that may hereafter be passed by the Congress of the United States.

History. Acts 1955, No. 73, § 1; A.S.A. 1947, § 17-315. eral funds received for lease of lands for flood control purposes, § 19-7-403.

Cross References. Distribution of fed-

14-16-113. Sale proceeds paid into county road fund.

Upon the sale of county property which the county purchased with funds from the county road fund, the proceeds of the sale shall be paid into the county road fund. If, in addition to county road funds, other funds were used by the county to purchase the property, then the amount to be paid into the county road fund shall be a portion of the proceeds determined by using the ratio of the amount of county road funds used by the county in purchasing the property to the full purchase price paid by the county.

History. Acts 1989, No. 169, § 1.

14-16-114. Financial aid.

(a) Counties, pursuant to an ordinance properly and lawfully adopted by their quorum courts, are empowered and authorized to annually grant financial aid to any public postsecondary educational institution located within their borders for the purpose of assisting the institution in paying its lawful expenses of operation.

(b) The ordinance shall be effective for a period of twelve (12) months.

History. Acts 1993, No. 866, § 1.

Publisher's Notes. Acts 1993, No. 866, § 1, is also codified as § 14-58-505.

14-16-115. Resident bidding preference limitation.

Unless a bidding preference for firms resident in the county or in the state is authorized by state law, no county shall allow such a preference in the awarding of a construction contract.

History. Acts 1997, No. 1161, § 1.

A.C.R.C. Notes. This section should be codified directly after § 14-16-102, however, pursuant to § 1-2-303, the Arkansas

Code Revision Commission is unable to effect that codification.

Cross References. Purchasing and contracts, § 19-11-101 et seq.

SUBCHAPTER 2 — PUBLIC RECREATION AND PLAYGROUNDS

SECTION.

14-16-201. Authority to operate.

14-16-202. Operation of programs generally.

14-16-203. State aid not used.

14-16-204. Use of school funds.

SECTION.

14-16-205. Gifts and bequests.

14-16-206. Property used for activities.

14-16-207. Use of school facilities.

14-16-208. Directors and instructors.

Publisher's Notes. Acts 1941, No. 291 is also codified as § 6-21-501 et seq. and § 14-54-1301 et seq.

Cross References. Parks annexed to city, § 14-40-204.

Title to parks not acquired by adverse possession, § 22-1-201.

Effective Dates. Acts 1941, No. 291,

§ 6: approved Mar. 26, 1941. Emergency clause provided: "This act being necessary for the promotion of an adequate National Defense and an able-bodied citizenry, an emergency is declared to exist and the same shall take effect and be in force from and after its passage."

CASE NOTES

Swimming Pools.

For cases discussing liability in operation of swimming pools by municipalities, see *Handley v. City of Hope*, 137 F. Supp. 442 (W.D. Ark.), appeal dismissed, 239

F.2d 647 (8th Cir. 1956); *Cabbiness v. City of North Little Rock*, 228 Ark. 356, 307 S.W.2d 529 (1957).

Cited: *Kendall v. Henderson*, 238 Ark. 832, 384 S.W.2d 954 (1964).

14-16-201. Authority to operate.

(a) Any county or county board may:

- (1) Operate a program of public recreation and playgrounds;
- (2) Acquire, equip, and maintain land, buildings, or other recreational facilities; and
- (3) Expend funds for the operation of the program pursuant to the provisions of this subchapter.

(b) The provisions of this subchapter shall not apply to § 17-22-201 et seq.

History. Acts 1941, No. 291, § 1;
A.S.A. 1947, § 19-3601.

14-16-202. Operation of programs generally.

(a) Any county or county board may operate a program of public recreation and playgrounds independently; or they may cooperate in its conduct and in any manner in which they may mutually agree, including with cities, towns, or school districts; or they may delegate the cooperation of the program to a recreation board created by one or more of them and appropriate money voted for this purpose to the board.

(b) In the case of school districts, the right to enter into such agreements with any other public corporation, board, or body or the right to delegate power to a board for operating a program of recreation shall be authorized only by a majority vote cast at an annual school election.

History. Acts 1941, No. 291, § 2;
A.S.A. 1947, § 19-3602.

14-16-203. State aid not used.

State aid shall not be used for recreational purposes as provided in this subchapter.

History. Acts 1941, No. 291, § 2;
A.S.A. 1947, § 19-3602.

14-16-204. Use of school funds.

In all cases where school funds are utilized for programs under this subchapter, the State Board of Education shall prepare, or cause to be prepared, published, and distributed, adequate and appropriate manuals and other materials as it may deem necessary or suitable to carry out the provisions of this subchapter.

History. Acts 1941, No. 291, § 4;
A.S.A. 1947, § 19-3604.

14-16-205. Gifts and bequests.

Any corporation, board, or body given charge of a recreation program shall have authority to accept gifts and bequests for the benefit of the recreational service.

History. Acts 1941, No. 291, § 3;
A.S.A. 1947, § 19-3603.

14-16-206. Property used for activities.

Any corporation, board, or body given charge of a recreation program is authorized to conduct its activities on:

- (1) Property under its custody and management;
- (2) Other public property under the custody of any other public organization, body, or board, with the consent of the corporations, bodies, or boards; and
- (3) Private property, with the consent of its owners.

History. Acts 1941, No. 291, § 3;
A.S.A. 1947, § 19-3603.

14-16-207. Use of school facilities.

(a) The facilities of any school district operating a recreation program pursuant to the provisions of this subchapter shall be used primarily for the purpose of conducting the regular school curriculum and related activities, and the use of school facilities for recreation purposes authorized by this subchapter shall be secondary.

(b) In all cases where school property is utilized for programs under this subchapter, the State Board of Education shall prepare or cause to be prepared, published, and distributed adequate and appropriate manuals and other materials as it may deem necessary or suitable to carry out the provisions of this subchapter.

History. Acts 1941, No. 291, §§ 4, 5;
A.S.A. 1947, §§ 19-3604, 19-3605.

14-16-208. Directors and instructors.

(a) Any corporation, board, or body given charge of a recreation program shall have authority to employ directors and instructors of recreational work.

(b) In all cases where school funds or property are utilized for programs under this subchapter, the State Board of Education shall establish minimum qualifications of local recreational directors and instructors.

History. Acts 1941, No. 291, §§ 3, 4;
A.S.A. 1947, §§ 19-3603, 19-3604.

SUBCHAPTER 3 — PUBLIC PROPERTY FOR PROCESSING CRUDE BIOGENIC GASES

SECTION.

14-16-301. Authority to lease, etc.
14-16-302. Bidding process.

SECTION.

14-16-303. Implementing legislation.
14-16-304. Authority to issue bonds.

Publisher's Notes. Acts 1983, No. 478,
is also codified as § 14-54-401 et seq.

14-16-301. Authority to lease, etc.

Each county shall have the authority to lease, let, sell, or convey any real property owned or controlled by the county for the production, reclamation, and refining of crude biogenic gases pursuant to competitive sealed bidding procedures under this subchapter.

History. Acts 1983, No. 478, § 1;
A.S.A. 1947, § 19-2356.

14-16-302. Bidding process.

(a)(1) The county judge shall publish a notice inviting sealed bids for the leasing, letting, selling, or conveying of real property for the production, reclamation, and refining of crude biogenic gases. This notice shall be published in a legal newspaper in the county where the property is located one (1) time each week for the four (4) weeks immediately prior to the date set for receiving bids.

(2) No bid shall be received, accepted, or considered when received after the date set for the receipt of bids.

(b)(1) Within thirty (30) days after the date set for the receipt of bids, the bids shall be opened and read at a public meeting of the county quorum court.

(2)(A) At the meeting, the county judge shall select and award the lease to the property or award the property to the highest, responsible, and best bidder.

(B) The county judge may reject all bids and begin the bidding process anew.

History. Acts 1983, No. 478, § 2;
A.S.A. 1947, § 19-2357.

14-16-303. Implementing legislation.

Each county may provide, by ordinance, for the implementation of this subchapter, but no provision shall be contrary to it.

History. Acts 1983, No. 478, § 3;
A.S.A. 1947, § 19-2358.

14-16-304. Authority to issue bonds.

This subchapter shall not limit the authority of any county to lease, let, sell, or convey any real property pursuant to the Constitution and laws of Arkansas concerning the issuance of bonds for the purpose of industrial development and other lawful purposes.

History. Acts 1983, No. 478, § 4;
A.S.A. 1947, § 19-2359.

RESEARCH REFERENCES

UALR L.J. Survey, Water and Environmental Law, 12 UALR L.J. 665.

SUBCHAPTER 4 — AREAS ADJACENT TO SHOPPING CENTERS

SECTION.

14-16-401. Authority to control use.

14-16-402. Plat of area.

14-16-403. Posting of signs, etc. — Penalty.

SECTION.

14-16-404. Policing of area.

14-16-405. Tort liability unchanged.

Publisher's Notes. Acts 1973, No. 472, is also codified as § 14-54-501 et seq.

Effective Dates. Acts 1977, No. 796, § 3: Mar. 28, 1977. Emergency clause provided: "The General Assembly of the State of Arkansas hereby finds that the matters affected by this Act have a direct relation to the administration of justice and the

preservation of public order and safety in the areas affected. Therefore, an emergency is hereby found and declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval."

14-16-401. Authority to control use.

The county courts of this state are delegated the power and authority to enter orders to limit and control the use of areas adjacent to shopping centers and other commercial enterprises which are privately owned but which are maintained for the convenience of the public so as to provide ingress and egress, loading and unloading areas, fire lanes, parking spaces, parking areas designated for the exclusive use of disabled persons, and other measures for the safety and convenience of the public.

History. Acts 1973, No. 472, § 1; 1985, No. 527, § 1; A.S.A. 1947, § 19-2350.

14-16-402. Plat of area.

(a) No order shall be entered unless and until the owner or lessee of an area sought to be regulated has presented to the county court a plat of the area upon which is shown the proposed limitations and controls.

(b) The plat shall in no way limit the power and authority of the county court but shall be advisory only.

History. Acts 1973, No. 472, § 2; A.S.A. 1947, § 19-2351.

RESEARCH REFERENCES

UALR L.J. Survey, Water and Environmental Law, 12 UALR L.J. 665.

14-16-403. Posting of signs, etc. — Penalty.

(a) When the county court has entered an order, the owner or lessee of the area to be controlled shall, at his expense, post the signs, paint the lines, arrows, and curbing in the required colors, and install the devices and signals to apprise the public of the existence of the court order.

(b) Thereafter, persons who violate these orders shall be punished as provided in the orders. However, no fine shall be less than five dollars (\$5.00) nor more than fifty dollars (\$50.00).

History. Acts 1973, No. 472, § 3; A.S.A. 1947, § 19-2352.

14-16-404. Policing of area.

(a) No county shall be required to patrol the area which is controlled as provided in this subchapter, but, upon being called, law enforcement officers shall come to the scene of the alleged violation and, where warranted by law or ordinance, issue citations or make arrests.

(b) This section is cumulative to other laws on this subject and specifically does not repeal § 16-81-108.

History. Acts 1973, No. 472, § 4; 1977, No. 796, §§ 1, 2; A.S.A. 1947, §§ 19-2353, 19-2353.1.

14-16-405. Tort liability unchanged.

Nothing in this subchapter shall limit or extend the law of this state with reference to tort liability of any person, firm, or corporation.

History. Acts 1973, No. 472, § 5; A.S.A. 1947, § 19-2354.

SUBCHAPTER 5 — REGULATION OF USE OF FIREARMS AND ARCHERY EQUIPMENT

SECTION.

- 14-16-501. Regulation upon request of suburban improvement district.
- 14-16-502. Regulation upon request of property owners' association.

SECTION.

- 14-16-503. Exemptions.
- 14-16-504. Regulation by local unit of government.

A.C.R.C. Notes. References to "this subchapter" in §§ 14-16-501 — 14-16-503 may not apply to § 14-16-504 which was enacted subsequently.

Cross References. Sport shooting range noise pollution, § 16-105-501 et seq.

14-16-501. Regulation upon request of suburban improvement district.

(a) Upon the written request of the governing body of a suburban improvement district, a county may by ordinance regulate the discharge of firearms and the shooting of archery equipment within all or any part of the suburban improvement district.

(b) As used in this section "suburban improvement district" means a suburban improvement district which includes as one of its purposes for organization the construction or maintenance of roads or streets and which is governed by § 14-92-201, et seq. or its predecessor acts.

History. Acts 1991, No. 385, § 1; 1991, No. 681, § 1.

14-16-502. Regulation upon request of property owners' association.

Upon the written request of a property owners' association which has a population at least equal to that prescribed for cities of the first class and which is located outside the boundaries of a municipality, a county may by ordinance regulate the discharge of firearms and the shooting of

archery equipment within all or any part of the area included in the property owners' association.

History. Acts 1991, No. 385, § 2.

14-16-503. Exemptions.

Nothing in this subchapter shall be construed to prohibit:

(1) The discharge of a firearm or archery equipment in the defense of life or property;

(2) The discharge of a firearm or archery equipment at a public or private shooting range or gallery; or

(3) The discharge of a firearm by a law enforcement officer in the performance of his or her duty.

History. Acts 1991, No. 385, § 3.

14-16-504. Regulation by local unit of government.

(a) As used in this section, "local unit of government" means a city, town, or county.

(b) A local unit of government shall not enact any ordinance or regulation pertaining to, or regulate in any other manner, the ownership, transfer, transportation, carrying, or possession of firearms, ammunition for firearms, or components of firearms, except as otherwise provided in state or federal law. This shall not prevent the enactment of an ordinance regulating or forbidding the unsafe discharge of a firearm.

(c) Notwithstanding subsection (b) of this section, the governing body of a local unit of government may, following the proclamation by the Governor of a state of emergency, enact an emergency ordinance regulating the transfer, transportation, or carrying of firearms, or components of firearms. Such emergency ordinance shall not be effective for a period of more than twenty (20) days and shall be enacted by a two-thirds ($\frac{2}{3}$) majority of the governing body.

History. Acts 1993, No. 1100, §§ 1-3.

Publisher's Notes. Acts 1993, No.

A.C.R.C. Notes. References to "this subchapter" in §§ 14-16-501 — 14-16-503 may not apply to this section which was enacted subsequently.

1100, §§ 1-3, are also codified as § 14-54-1411.

SUBCHAPTER 6 — RENT CONTROL PREEMPTION

SECTION.

14-16-601. Rent control preemption.

14-16-601. Rent control preemption.

(a) As used in this section, “local governmental unit” means a political subdivision of this state, including, but not limited to, a county, city, village, or township, if the political subdivision provides local government services for residents in a geographically limited area of this state as its primary purpose and has the power to act primarily on behalf of that area.

(b) A local governmental unit shall not enact, maintain, or enforce an ordinance or resolution that would have the effect of controlling the amount of rent charged for leasing private residential or commercial property.

(c) This section does not impair the right of any local governmental unit to manage and control residential property in which the local governmental unit has a property interest.

History. Acts 1993, No. 545, §§ 1-3.

Publisher’s Notes. Acts 1993, No. 545, §§ 1-3 are also codified as § 14-54-1409.

SUBCHAPTER 7 — REGULATION OF DOGS AND CATS**SECTION.**

14-16-701. Regulation by suburban improvement district.

14-16-701. Regulation by suburban improvement district.

(a) Upon the written request of the governing body of a suburban improvement district, a county may by ordinance control and regulate dogs and cats within all or any part of the suburban improvement district.

(b) As used in this section, “suburban improvement district” means a suburban improvement district which includes as one of its purposes for organization the construction or maintenance of roads or streets and which is governed by § 14-92-201 et seq. or its predecessor acts.

History. Acts 1993, No. 622, § 1.

CHAPTER 17
COUNTY PLANNING**SUBCHAPTER.**

1. GENERAL PROVISIONS [RESERVED.]
2. COUNTY PLANNING BOARDS.
3. METROPOLITAN OR REGIONAL PLANNING COMMISSIONS.
4. COMMERCIAL MEDICAL WASTE INCINERATORS.

RESEARCH REFERENCES

ALR. Zoning regulations prohibiting or limiting fences, hedges, or walls. 1 ALR 4th 373.

Validity of "war zone" ordinances restricting location of sex-oriented businesses. 1 ALR 4th 1297.

Enforcement of zoning regulation as affected by other violations. 4 ALR 4th 462.

Validity and construction of provisions of zoning statute or ordinance regarding protest by neighboring property owners. 7 ALR 4th 732.

Standing of civic or property owners' association to challenge zoning board decision (as aggrieved party). 8 ALR 4th 1087.

Construction of new building or structure on premises devoted to nonconforming use as zoning violation. 10 ALR 4th 1122.

Ordinance restricting number of unrelated persons who can live together in residential zone. 12 ALR 4th 238.

Standing of zoning board of appeals or similar body to appeal reversal of its decision. 13 ALR 4th 1130.

Validity and construction of statute or ordinance protecting historical landmarks. 18 ALR 4th 990.

Local use zoning of wetlands or flood plain as taking without compensation. 19 ALR 4th 756.

Applicability and application of zoning regulations to single residences employed for group living of mentally retarded persons. 32 ALR 4th 1018.

Am. Jur. 56 Am. Jur. 2d, Mun. Corp. & Coun., § 161.7.

83 Am. Jur. 2d, Zoning, §§ 7 et seq., 13, 17 et seq., 128 et seq.

Ark. L. Rev. Burton, Predatory Municipal Zoning Practices: Changing the Presumption of Constitutionality in the Wake of the "Takings Trilogy," 44 Ark. L. Rev. 65.

UALR L.J. Note, Property — Zoning — The Courts Further Define Their Limited Role. City of Little Rock v. Breeding, 273 Ark. 437, 619 S.W.2d 664 (1981). 5 UALR L.J. 279.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — COUNTY PLANNING BOARDS

SECTION.

- 14-17-201. Construction.
- 14-17-202. Applicability.
- 14-17-203. Creation and organization.
- 14-17-204. Employees and facilities.
- 14-17-205. Powers, duties, and functions.
- 14-17-206. Purpose and content of county plan.
- 14-17-207. Adoption, amendment, and enforcement of official plans and implementing ordinances.

SECTION.

- 14-17-208. Subdivision, setback, and entry control ordinances.
- 14-17-209. Zoning ordinance — Zoning board of adjustment.
- 14-17-210. Unincorporated areas being developed with federal funds.
- 14-17-211. Appeals.

Effective Dates. Acts 1981, No. 516, § 4: Mar. 16, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the conflict contained in Section 1.0 of Act 422 of 1977

and in Section 103 of Chapter 6 of Act 742 of 1977 regarding the number of members of county planning boards has created considerable confusion and has been detrimental to the effective and efficient op-

eration of planning boards in the respective counties; that this Act is designed to correct this conflict and to specifically provide that county planning boards shall consist of not less than five (5) nor more than twelve (12) members; and that this Act should be given effect immediately in order to enable the county planning board in the respective counties to carry out their functions and duties as prescribed by law. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 532, § 2: Mar. 17, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the filing of instruments transferring title to property is fundamental to protecting a person's title to such property, and that it is in the public interest that the county recorder accept such instruments as are presented for record, and that in order to assure said rights, it is immediately necessary to amend Act 422 of 1977 to clarify the provisions of the County Planning Law, and to prohibit the County Planning Board from adopting

any regulation that might restrict a person's right to file deeds or other instruments of property transfer with the county recorder for record. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 691, § 2: Mar. 23, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the filing of plats is fundamental to protecting a person's title to property, and that it is in the public interest that the County Recorder cooperate with the Planning Board in counties with populations of 300,000 or greater in acceptance of such plats as are presented for record, and that in order to assure said rights and cooperation, it is immediately necessary to amend Act 422 of 1977, to clarify the provisions of the County Planning Law. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Notes. Olson, *Agricultural Zoning: A Remedy for Land Use Conflicts Between Poultry Production and Residen-*

tial Development In Northwest Arkansas, 1997 Ark. L. Notes 119.

14-17-201. Construction.

This subchapter shall be construed liberally. The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

History. Acts 1977, No. 422, § 10.0; A.S.A. 1947, § 17-1116.

14-17-202. Applicability.

(a) Nothing in this subchapter shall invalidate any plans, ordinances, or regulations duly adopted in accordance with the statutes in effect at the time of adoption.

(b) No alteration or amendments shall be made to existing plans, ordinances, and regulations unless in conformity with the provisions of this subchapter.

History. Acts 1977, No. 422, § 8.0;
A.S.A. 1947, § 17-1114.

14-17-203. Creation and organization.

(a) The county judge of any county may, with the approval of the majority of the members of the county quorum court, create a county planning board. The board shall consist of not less than five (5) members nor more than twelve (12) members appointed by the judge and confirmed by the court. At least one-third ($\frac{1}{3}$) of the members shall not hold any other elective office or appointment, except membership on a municipal or joint planning commission or a zoning board of adjustment.

(b) The term of each member shall be four (4) years. In the initial appointments to the board, a majority, but not exceeding three-fifths ($\frac{3}{5}$) of the total membership of the board, shall be appointed for two (2) years and the remaining members for four (4) years. A vacancy in the membership due to death, resignation, removal, or other cause shall be filled by an appointee of the judge, confirmed by the court, for the unexpired term. Any member of the board shall be subject to removal for cause upon recommendation of the judge and confirmation by the court.

(c) The board shall designate one of its members as chairman and select a vice chairman and such other officers as it may require.

(d) A regular meeting date shall be established providing for at least one (1) regular meeting to be held in each quarter of each calendar year.

(e) The board shall adopt rules and regulations for the discharge of its duties and the transaction of business and shall keep a public record of all business, resolutions, transactions, findings, and determinations.

(f) County quorum courts may elect to assume the powers, duties, and functions of the board. Such determination shall be implemented by ordinance. A court which elects to exercise this option shall not be bound by the provisions of this section and § 14-17-204, but may, by ordinance, establish such administrative changes as may be appropriate.

History. Acts 1981, No. 516, § 2; A.S.A. 1947, § 17-1107

Publisher's Notes. Acts 1981, No. 516, § 1, provided that it is found and determined by the General Assembly that Acts 1977, No. 422, § 1.0, provides that the county planning board in each county shall consist of not less than five (5) nor more than twelve (12) members; that Acts 1977, No. 742 provides that county administrative boards shall consist of five (5) members; that as a result of the conflict in the two acts regarding the number of members on county planning boards,

there is considerable confusion and disagreement regarding the membership of county planning boards; that this conflict and confusion should be corrected in order to enable county planning boards to carry out their responsibilities in an effective and efficient manner; therefore, it is the purpose and intent of this act to reenact Acts 1977, No. 422, § 1.0, to clarify this conflict and to remove the confusion regarding county planning boards by specifically providing that county planning boards shall consist of not less than five (5) nor more than twelve (12) members.

CASE NOTES**Constitutionality.**

The General Assembly has the authority to create county planning boards and to provide rules and regulations for their

government. *Newton v. American Sec. Co.*, 201 Ark. 943, 148 S.W.2d 311 (1941) (decision under prior law).

14-17-204. Employees and facilities.

(a) The county judge may appoint such employees as he may deem necessary for the county planning board's work, whose appointment, promotion, demotion, or removal shall be subject to the same provisions of the law as govern other employees of the county. In the manner provided by law, the county may contract for services necessary to carry out the functions of the board.

(b) The county may receive and spend funds from federal, state, county, municipal, and other public and private sources for planning activities and may contract with respect thereto. All board expenditures shall be within the amounts appropriated by the county quorum court.

(c) Members of the board established pursuant to the provisions of this subchapter shall be entitled to receive such compensation, if any, for attendance at board meetings and the carrying out of board-related activities as may be authorized by ordinance duly adopted by the court.

(d) The board shall be supplied with necessary office space in the county courthouse or other suitable quarters and shall be provided with the necessary equipment to carry out its activities.

History. Acts 1977, No. 422, § 2.0;
A.S.A. 1947, § 17-1108.

14-17-205. Powers, duties, and functions.

(a) The general purpose of the county planning board is to promote public interest in planning, to prepare or have prepared plans for the county, to receive and make recommendations on public and private proposals for development, to prepare and transmit to the county quorum court recommended ordinances implementing plans, and to advise and counsel the county judge, the court, and other public bodies on planning-related matters.

(b) The board may prepare and recommend an official plan for the development of the county. The board shall have the authority to confer with federal, state, municipal, and other county and regional authorities regarding matters pertaining to or affecting the planning or development of the county, or vice versa, for the purpose of assuring proper coordination of county development with that of other political subdivisions.

(c) All public officials, departments, and agencies of the county, upon request and within a reasonable time, shall furnish the board with such available information as it may require for its work. The board may prepare and keep up-to-date a long-term coordinated program of public works and budgets therefor in conformity with an official county plan.

(d) The board, its members, officers, and employees, in the performance of their functions, may enter upon any land to make necessary inspections.

(e) For the purpose of special surveys, the county judge may assign or detail members of the staff or personnel of any county administrative department, bureau, or agency to the board or may direct any such department, bureau, or agency to make special surveys or studies for the board.

(f) The board shall have such powers, duties, and functions in the areas of plan adoption and enforcement, subdivision, and zoning as specified in §§ 14-17-207 — 14-17-209 and such other duties as may be assigned by the court.

History. Acts 1977, No. 422, § 3.0;
A.S.A. 1947, § 17-1109.

CASE NOTES

ANALYSIS

Jurisdiction.
Zoning.

Jurisdiction.

Where there was a conflict over the exercise of jurisdiction over roads in an unincorporated portion of a county, between the county court and any creature of the General Assembly, the latter had to give way. *Butler v. City of Little Rock*, 231 Ark. 834, 332 S.W.2d 812 (1960) (decision under prior law).

Zoning.

While the county planning commission could recommend zoning of unincorporated areas as to land use, such recommendations were not binding until adopted by the county court, after a public hearing; and where this necessary action was not disclosed in the record, landowners who sought to enforce provisions of bill of assurance covering nearby subdivision did not have standing under precedents permitting owners of nearby property to challenge changes in zoning, even though they owned no property in the rezoned area. *Rickman v. Mobbs*, 253 Ark. 969, 490 S.W.2d 129 (1973) (decision under prior law).

rated areas as to land use, such recommendations were not binding until adopted by the county court, after a public hearing; and where this necessary action was not disclosed in the record, landowners who sought to enforce provisions of bill of assurance covering nearby subdivision did not have standing under precedents permitting owners of nearby property to challenge changes in zoning, even though they owned no property in the rezoned area. *Rickman v. Mobbs*, 253 Ark. 969, 490 S.W.2d 129 (1973) (decision under prior law).

14-17-206. Purpose and content of county plan.

(a) The county plan shall be made with the general purpose of guiding and accomplishing a coordinated, efficient, and economic development of the county, or part thereof. In accordance with one (1) or more of the following criteria, the plan will seek to best promote the health, safety, convenience, prosperity, and welfare of the people of the county.

(b) All county plans shall reflect the county's development policies and shall contain a statement of the objectives and principles sought to be embodied therein. These plans, with the accompanying maps, charts, and descriptive matter, may make recommendations, among other things, as to:

- (1) The conservation of natural resources;
- (2) The protection of areas of environmental concern;
- (3) The development of land subject to flooding;

(4) The provision of adequate recreation, education, and community facilities including water, sewer, solid waste, and drainage improvements;

(5) The development of transportation facilities, housing development, and redevelopment; and

(6) Such other matters which are logically related to or form an integral part of a long-term plan for orderly development and redevelopment of the county.

(c)(1) Areas of critical environmental concern include, among other things, aquifers and aquifer recharge areas, soils poorly suited to development, floodplains, wetlands, prime agricultural and forestlands, the natural habitat of rare or endangered species, areas with unique ecosystems, or areas recommended for protection in the Arkansas Natural Areas Plan. Plans for these areas shall give consideration to protective mechanisms which seek to regulate activities or development therein.

(2) These mechanisms may include establishment of special zoning districts, adoption and enforcement of building codes, acquisition of easements or land through capital expenditures programming, and specialized development policies. Where appropriate, county management activities for areas of critical environmental concern shall involve cooperative agreements with interested state and federal agencies.

(d) In the preparation of all plans for the county or part of a county, the plans shall be consistent with state plans and other related regional, county, and municipal plans in order to avoid inconvenience and economic waste and to assure a coordinated and harmonious development of the county, region, and state.

History. Acts 1977, No. 422, § 4.0;
A.S.A. 1947, § 17-1110.

14-17-207. Adoption, amendment, and enforcement of official plans and implementing ordinances.

(a) The county planning board, by majority vote of its entire membership, may recommend to the county quorum court the adoption, revision, or rescission of an official plan for the county or zoning, subdivision, setback, or entry control ordinances referred to as implementing ordinances in this subchapter.

(b) Before the adoption or revision of an official plan or implementing ordinance, or parts thereof, the board shall hold at least one (1) public meeting thereon. The meeting may be adjourned from time to time. Prior to the meeting, the board chairman shall notify the court of the purpose and intent of the meeting in sufficient time to allow the justices to attend the meeting if they so desire. At the same time, the public shall be notified of the meeting through the local newspapers and other media.

(c) Following the public meeting and endorsement of the plan or implementing ordinances by the board, as provided in this section, it

shall be forwarded to the quorum court for its consideration. The court may adopt the plan as the official plan for the county by ordinance, may modify the plan or parts thereof, or may return the plan or parts thereof to the board for further consideration. In the event the court modifies the plan or parts thereof, it shall return the plan, as modified, to the board with instructions to conduct a public hearing on the modifications as provided in subsection (b) of this section. Following the hearing, the court may adopt, modify, or reject the plan as modified, whether or not the board endorses the modified plan. The same procedures shall be followed for any implementing ordinances enacted by the county. Planning and zoning recommendations initiated by the court shall be sent to the board for the public meeting as required by this subsection.

(d) From and after the adoption by the court of the official county plan, no improvements shall be made or authorized and no property shall be acquired, or its acquisition authorized, by any county or public agency which has, or is likely to have, definite part in or relation to the official county plan unless the proposed location, character, and extent thereof shall have been submitted by the agency concerned to the board and a report and recommendation of the board thereon shall have been received. If the board fails to initiate deliberation on such improvement or acquisition within thirty (30) days after receipt thereof and to furnish in writing its report and recommendations upon a proposal within sixty (60) days thereafter, the agency may proceed without the report and recommendation.

(e) In case any such improvement, ground, building, structure, or property is given a location or extent which does not accord with the report and recommendations of the board, the county official, department, or any other public agency having charge of the location, authorization, acquisition, or construction of it shall file in the office of the board a statement of its or his reasons for the departure from the report and recommendation, and such statement shall be open to public inspection.

(f) The quorum court shall provide for the means of enforcing the official plan or zoning, subdivision, setback, and entry control ordinances, shall provide penalties for violations, and may seek appropriate remedies for violations. Any individual aggrieved by a violation of any such plan or ordinance may request an injunction against any individual or property owner in violation or may mandamus any official to enforce the provisions of the ordinance.

History. Acts 1977, No. 422, § 5.0; 1981, No. 278, § 2; A.S.A. 1947, § 17-1111.

14-17-208. Subdivision, setback, and entry control ordinances.

(a) The county planning board may prepare and, after approval by the county quorum court, shall administer the ordinance controlling the development of land. The development of land includes, but is not limited to, the provision of access to lots and parcels, the provision of utilities, the subdividing of land into lots and blocks, and the parceling of land resulting in the need for access and utilities.

(b) The ordinance controlling the development of land may establish or provide for minimum requirements as to:

- (1) Information to be included on the plat filed for record;
- (2) The design and layout of the subdivision, including standards for lots and blocks, streets, public rights-of-way, easements, utilities, and other similar items;
- (3) The standards for improvements to be installed by the developer at his expense, such as street grading and paving, curbs, gutters, and sidewalks, water, storm, and sewer mains, street lighting, and other amenities.

(c) The ordinance shall require that all plats of two (2) or more parcels be submitted to the board for its approval and certification.

(d) The ordinance may require the installation or assurance of installation of required improvements before plat approval. Further, the regulations may provide for the dedication of all rights-of-way to the public.

(e) Neither the board nor the court shall restrict or limit the right of any person to file a deed or other instrument of transfer of property with the county recorder to be filed of record.

(f) The ordinance shall establish the procedure to be followed to secure plat approval by the board.

(g) The ordinance shall require the development to conform to the official plan currently in effect. The ordinance may require the reservation or reasonable equivalent contribution of cash, other land, or considerations as approved by the board for future public acquisition of land for community or public facilities indicated in the official plan. The reservation may extend over a period of not more than one (1) year from the date of recording the final plat with the county recorder.

(h) Adoption of a county subdivision ordinance shall be preceded by the adoption of an official road plan for the unincorporated areas of the county. The plan shall include as a minimum designation of the general location, characteristics, and functions of roads, and the general location of roads to be reserved for future public acquisition. The plan may also recommend, among other things, the removal, relocation, widening, narrowing, vacating, abandonment, change of use, or extension of any public ways.

(i) In unincorporated areas adjoining the corporate limits of a municipality in which the authority to control the subdivision of land is vested and is being exercised in accordance with and under the provisions of §§ 14-56-401 — 14-56-408 and 14-56-410 — 14-56-425, or

any amendments thereto or thereof, or other acts of a similar nature enacted by the General Assembly, the municipal authority shall have subdivision jurisdiction but shall transmit copies of proposed plats for the areas to the board for review and comment, which shall be made to the municipal authority within sixty (60) days from the time it is received by the board unless further time is allowed by the municipal authority.

(j) When an official road plan has been adopted and filed as provided for in § 14-17-207, the court, upon recommendation of the board, may enact ordinances establishing setback lines on the major streets and highways as are designated by the plan and may prohibit the establishment of any structure or other improvements within the setback lines.

(k) When an official road plan has been adopted and filed as provided for in § 14-17-207, the court, upon recommendation of the board, may enact ordinances providing for the control of entry into any of the roads shown in the official plan.

(l) Following the adoption of any subdivision, setback, or entry control ordinances by the court, the county recorder shall not accept any plat in the unincorporated area of the county not within the exercised extra-territorial jurisdiction of a municipality for record without the approval of the planning board. In counties with populations of three hundred thousand (300,000) or greater, the county recorder shall not accept any plats in the unincorporated area of the county without the county court's acceptance of roads for perpetual maintenance and acceptance of any dedication of land for public purposes.

History. Acts 1977, No. 422, § 6.0; 1981, No. 532, § 1; 1981, No. 691, § 1; A.S.A. 1947, § 17-1112.

Cross References. Municipal planning commission Territorial jurisdiction, § 14-56-413.

CASE NOTES

Plats.

In mandamus proceeding to compel circuit clerk to record plat not approved by county planning board because of refusal to dedicate additional strips for roads, court was held not authorized, without any evidence and without any claim that the board acted arbitrarily, to set aside its judgment. *Newton v. American Sec. Co.*, 201 Ark. 943, 148 S.W.2d 311 (1941) (decision under prior law).

In mandamus proceedings to compel circuit clerk to record plat not approved by county planning board because of refusal to dedicate additional strips for roads, trial court's holding that action of the board was unauthorized because no provision was made for compensation to the landowner was held erroneous. *Newton v.*

American Sec. Co., 201 Ark. 943, 148 S.W.2d 311 (1941) (decision under prior law).

Approval of bill of assurance and plat of subdivision by county planning commission did nothing more than entitle the owner to place them of record, and such approval did not operate to confer standing upon landowners outside the subdivision to enforce the bill of assurance; and cases holding that owners of nearby property could challenge changes in zoning, even though they owned no property in the rezoned area, had no applicability where it did not appear that there was any zoning of the subdivision in question. *Rickman v. Mobbs*, 253 Ark. 969, 490 S.W.2d 129 (1973) (decision under prior law).

14-17-209. Zoning ordinance — Zoning board of adjustment.

(a) The county planning board shall have authority to prepare, or to cause to be prepared, a zoning ordinance for all or part of the unincorporated area of the county, which ordinance shall include both a map and a text. The zoning ordinance may regulate the location, height, bulk, number of stories, and the size of building; open space; lot coverage; density and distribution of population; and the uses of land, buildings, and structures. It may require off-street parking and loading. It may provide for districts of compatible uses, for large scale unified development, for the control and elimination of uses not in conformance with provisions of the ordinance, and for such other matters as are necessary to the health, safety, and general welfare of the county. The zoning ordinance shall designate districts or zones of such shape, size, or characteristics as deemed advisable for all, or part, of the unincorporated area of the county. The regulations imposed within each district or zone shall be uniform throughout the district or zone.

(b) The determination of zones shall be consistent with any officially adopted plans for the area to be zoned. In the development of zoning districts and their boundaries, due consideration shall be given to the adopted plans of municipal planning commissions for extraterritorial planning areas.

(c) The zoning ordinance shall be observed through denial of the issuance of building permits and use permits.

(d) It shall be unlawful to erect, construct, reconstruct, alter, maintain, or use any land, building, or structure in violation of any ordinance of the county quorum court.

(e) The zoning ordinance shall provide for a board of zoning adjustment which shall be formed in either of the following ways:

(1) A minimum of three (3) residents of the county may be appointed to the zoning board of adjustment; or

(2) The planning board as a whole may sit as the zoning board of adjustment.

(f) Whenever a separate board of zoning adjustment is established, appointments, length of term, vacancies, removal, and compensation shall be the same as for the county planning board.

(g) The board of zoning adjustment shall have the following functions:

(1) To hear appeals from administrative decisions with respect to the enforcement and application of the ordinance and affirm or reverse, in whole or part, the administrative decisions;

(2) To hear requests for variances from the literal provisions of the zoning ordinance in instances where strict enforcement of the zoning ordinance would cause undue hardship due to circumstances unique to the individual property under consideration and to grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the zoning ordinance. The board of zoning adjustment may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.

(h) The zoning board of adjustment shall not permit, as a variance, any use in a zone that is not permitted under the ordinance.

(i) Decisions of the board of zoning adjustment in respect to the above shall be subject to appeal only to a court of record having jurisdiction.

History. Acts 1977, No. 422, § 7.0;
A.S.A. 1947, § 17-1113.

RESEARCH REFERENCES

Ark. L. Rev. Case Note, Johnson v. Sunray Services, Inc.: Possible Solutions to the NIMBY Syndrome, 45 Ark. L. Rev. 657.

CASE NOTES

Landfill Sites.

The planning board does have authority to prepare a zoning ordinance for the county, but that is not exclusive authority

which divests the quorum court of its power to adopt standards for the location of landfill sites. Johnson v. Sunray Servs., Inc., 306 Ark. 497, 816 S.W.2d 582 (1991).

14-17-210. Unincorporated areas being developed with federal funds.

The county planning board shall have the exclusive zoning and planning jurisdiction over all unincorporated areas lying within a county and along a navigable stream notwithstanding the fact that such areas may be within five (5) miles of the corporate limits of a city having a planning commission if the unincorporated areas are lands upon which a new community has been or is being developed with funds guaranteed, in whole or in part, by the federal government under Title IV of the Housing and Urban Development Act of 1968 or under Title VII of the Housing and Urban Development Act of 1970.

History. Acts 1981, No. 134, § 1;
A.S.A. 1947, § 17-1117

U.S. Code. Title IV of the Housing and Urban Development Act of 1968, referred to in this section, has been largely re-

pealed. A portion of the title is codified as 12 U.S.C. §§ 371 and 1464. Title VII of the Housing and Urban Development Act of 1970 is codified as 12 U.S.C. §§ 371 and 1464, 42 U.S.C. § 4501 et seq.

14-17-211. Appeals.

In addition to any remedy provided by law, appeals from final action taken by administrative, quasi-judicial, and legislative agencies concerned in the administration of this subchapter may be taken to the circuit court of the appropriate county where they shall be tried de novo according to the same procedure applicable to appeals in civil actions from decision of inferior courts, including the right of trial by jury.

History. Acts 1977, No. 422, § 9.0;
A.S.A. 1947, § 17-1115.

RESEARCH REFERENCES

UALR L.J. Stafford, Separation of Powers and Arkansas Administrative Agencies: Distinguishing Judicial Power and Legislative Power, 7 UALR L.J. 279.

SUBCHAPTER 3 — METROPOLITAN OR REGIONAL PLANNING COMMISSIONS

SECTION.

14-17-301. Provisions supplemental.
 14-17-302. Authority generally.
 14-17-303. Contents of joint agreement.
 14-17-304. Establishment of commission.
 14-17-305. Purpose of commission.

SECTION.

14-17-306. Duty of commission.
 14-17-307. Plans and recommendations.
 14-17-308. Receipt of funds.
 14-17-309. Appropriations.

Publisher's Notes. Acts 1955, No. 26 is also codified as § 14-56-501 et seq.

Effective Dates. Acts 1955, No. 26, § 8: Feb. 1, 1955. Emergency clause provided: "It is hereby determined by the General Assembly that many cities and counties are faced with many problems which have arisen due to increased population, expansion of urban areas, and many other problems which have resulted from improper planning and which have

resulted in the endangering of the health, safety and welfare of the people of such areas and that the immediate passage of this Act is necessary to alleviate such conditions. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

14-17-301. Provisions supplemental.

(a) Nothing in this subchapter shall be construed to remove or limit the powers of the cooperating cities and counties as provided by state law.

(b) All legislative power with respect to zoning and other planning legislation shall remain with the governing body of the cooperating cities and counties.

(c) Each participating city or county may continue to have its own planning commission or board but may, under the joint agreement and in the interest of economy and efficiency and in the interest of uniform standards and procedures, request the metropolitan or regional planning commission to assume duties and functions of local planning agencies, in whole or in part.

History. Acts 1955, No. 26, § 5; A.S.A. 1947, § 19-2824.

14-17-302. Authority generally.

Any two (2) or more cities of the first class, cities of the second class, incorporated towns, or counties, or other civil subdivisions having adjoining planning jurisdictions, or any counties and cities adjacent to or within the county may jointly cooperate in the exercise and performance of planning powers, duties, and functions as provided by state law for cities and counties.

History. Acts 1955, No. 26, § 1; A.S.A. 1947, § 19-2820.

CASE NOTES**Annexation.**

Since Acts 1957, No. 26, concerning the establishment, powers, and duties of a joint planning commission in no way deals with annexation, the annexation of an

area to a city will not be denied because the annexation has not been approved by a planning commission. *City of Sherwood v. Hardin*, 230 Ark. 762, 325 S.W.2d 75 (1959).

14-17-303. Contents of joint agreement.

(a) The cooperating cities and counties which join to create a metropolitan or regional planning commission shall, through joint agreement, determine the number and qualifications of the members of the commission.

(b) The joint agreement shall also provide for the manner of cooperation and the means and methods of the operation and functioning of the commission, including the employment of a director of planning and such staff and consultants as it may require, the proportionate share of costs and expenses, and the purchase of property and materials for the use of the commission.

(c) The joint agreement may also allow for the addition of other public bodies to the cooperative arrangement.

History. Acts 1955, No. 26, § 3; 1967, No. 29, § 1; A.S.A. 1947, § 19-2822.

14-17-304. Establishment of commission.

(a) When two (2) or more cities and counties shall adopt joint planning cooperation by ordinance, resolution, rule or order, there shall be established a joint planning commission for the metropolitan area or region comprising the area coterminous with the areas of planning jurisdiction of the cities or counties cooperating jointly.

(b) A joint planning agency for the metropolitan area or region may be empowered to carry into effect such provisions of state law relating to planning which are authorized for the joining cities or counties and which each may, under existing laws, separately exercise and perform.

(c) Any other public authority or agency which operates within, wholly or in part, the area covered by this joint planning cooperation

may likewise join with the cooperating cities or counties in cooperative planning through resolution of its governing board or commission.

History. Acts 1955, No. 26, § 1; A.S.A. 1947, § 19-2820.

14-17-305. Purpose of commission.

The general purpose of a metropolitan or regional planning commission shall be to make those studies and plans for the development of the metropolitan area or region that will:

- (1) Guide the unified development of the area;
- (2) Eliminate planning duplication;
- (3) Promote economy and efficiency in the coordinated development of the area; and
- (4) Promote the general welfare and prosperity of its people.

History. Acts 1955, No. 26, § 2; A.S.A. 1947, § 19-2821.

14-17-306. Duty of commission.

The metropolitan or regional planning commission shall have the duty and function of promoting public interest and understanding of the economic and social necessity for long-term coordinated planning for the metropolitan or regional area, but its official recommendations shall be made to the governing bodies or the county judges of the cooperating cities or counties.

History. Acts 1955, No. 26, § 5; A.S.A. 1947, § 19-2824.

14-17-307. Plans and recommendations.

(a)(1) The metropolitan or regional commission shall make plans for development for the area. These plans may include, but shall not be limited to, recommendations for principal highways, bridges, airports, parks and recreational areas, schools and public institutions, and public utilities.

(2) Any metropolitan or regional plan so developed shall be based on studies of physical, social, economic, and governmental conditions and trends.

(b) The plans and its recommendations may, in whole or in part, be adopted by the governing bodies of the cooperating cities and counties as the general plans of such cities and counties.

(c)(1) The commission may also assist the cities and counties within its area of jurisdiction in carrying out any regional plans developed by the commission; and

(2) The commission may also assist any planning commission, board, or agency of the cooperating cities or counties in the preparation or

effectuation of local plans and planning consistent with the program of the commission.

History. Acts 1955, No. 26, § 2; A.S.A. 1947, § 19-2821.

14-17-308. Receipt of funds.

A metropolitan or regional planning commission established under the provisions of this subchapter is authorized to receive, for its own uses and purposes, any funds or moneys from any participating city or county, from the state or federal government, and from any other source any other funds, including bequests, gifts, donations, or contributions.

History. Acts 1955, No. 26, § 4; A.S.A. 1947, § 19-2823.

14-17-309. Appropriations.

The participating cities and counties, or other public bodies, are authorized to appropriate funds for the expenses and costs required by the metropolitan or regional planning commission in the performance of its purposes and functions.

History. Acts 1955, No. 26, § 4; A.S.A. 1947, § 19-2823.

SUBCHAPTER 4 — COMMERCIAL MEDICAL WASTE INCINERATORS

SECTION.

14-17-401. Definition.

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SECTION.

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14-17-405. Violation — Penalty — Injunction.

Cross References. Municipal planning — Commercial medical waste incinerators, § 14-56-601 et seq.

Effective Dates. Acts 1993, No. 199, § 7: Feb. 24, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas that the powers of local governments in Arkansas to regulate the construction or operation of commercial medical waste incinerators are vague or incomplete; that the unregulated incineration of commercial medical waste poses a threat to the health and safety of the

citizens of Arkansas cities and counties; and therefore commercial medical waste incinerators should be made subject to the regulation by and control of local governments in Arkansas. Therefore, in order to clearly establish the authority of local governments to limit and regulate commercial medical waste incinerators, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

14-17-401. Definition.

“Commercial medical waste” means any medical waste transported from a generator to an off-site facility for disposal where such off-site disposal facility is engaged in medical waste disposal for profit.

History. Acts 1993, No. 199, § 3.

Publisher’s Notes. Acts 1993, No. 199,
§ 3 is also codified as § 14-56-601.

14-17-402. Authorization to establish zones.

Notwithstanding any and all laws regarding county planning and zoning, all counties in Arkansas are authorized to establish, by ordinance, zones to limit or to regulate the construction or operation, or both, of commercial medical waste incinerators within their boundaries.

History. Acts 1993, No. 199, § 2.

14-17-403. Enforcement.

The commercial medical waste incinerator zoning ordinance shall be enforced through the issuance or denial of building and use permits in accordance with the conditions and terms of the limitations and regulations established by the ordinance.

History. Acts 1993, No. 199, § 2.

14-17-404. Unlawful construction or operation.

When the county quorum court shall have laid off zones, by ordinance, to limit or to regulate the construction or operation, or both, of commercial medical waste incinerators, it shall be unlawful for anyone to construct or to operate a commercial medical waste incinerator within a given zone except in accordance with any building and use permits issued for the incinerator.

History. Acts 1993, No. 199, § 2.

14-17-405. Violation — Penalty — Injunction.

(a)(1) Violation of any provision of an ordinance adopted as authorized by this subchapter shall be considered a misdemeanor.

(2) Each day’s violation shall be considered a separate offense.

(b) The county adopting the ordinance or any individual aggrieved by a violation of the ordinance may request an injunction against any commercial medical waste incinerator or property owner who is in violation of the ordinance.

History. Acts 1993, No. 199, § 2.

CHAPTER 18

PLATTED LANDS OUTSIDE MUNICIPALITIES

SECTION.

- 14-18-101. Subdivision of lands — Filing.
- 14-18-102. Descriptions deemed legal.
- 14-18-103. Expense of survey — Recording.
- 14-18-104. Taxation of platted lands.
- 14-18-105. Authority to vacate street, alley, or roadway.
- 14-18-106. Petition to vacate street, etc.

SECTION.

- 14-18-107. Determination on vacation of street, etc.
- 14-18-108. Order vacating streets, etc.
- 14-18-109. Abutting lots reduced to acreage.
- 14-18-110. Validating return of platted land to acreage.

Cross References. Additions to cities and incorporated towns — Filing and recording requirements, § 14-41-201 et seq.

Additions to cities and incorporated towns — Reduction to acreage, § 14-41-301 et seq.

Preambles. Acts 1943, No. 259 contained a preamble which read: "Whereas, in the boom period prior to the depression, much acreage land not in any town or city, but adjacent to towns or cities, was platted into lots and blocks. In many instances, none of the lots were sold, or the lots that were sold came back to the original owners; and

"Whereas, under various proceedings the lands were thrown back into acreage and in some cases questions have arisen as to whether or not the reducing of the platted lots to acreage was entirely valid, and thus the conveying of the land is complicated. ..."

Effective Dates. Acts 1945, No. 56, § 5: approved Feb. 16, 1945. Emergency clause provided: "The public health, convenience and necessity requiring, this act shall become effective from and after its passage."

Acts 1945, No. 164, § 8: approved Mar. 2, 1945. Emergency clause provided: "It has been found and it is hereby determined by the General Assembly that in some counties of the state, lands outside of cities and towns have been platted into additions and the plats filed of record in the county; that in many cases the streets and alleys, or parts thereof, dedicated by the plat have never been opened or used and are of no use to the public or the property owners in the addition as streets and alleys; that some tracts of land con-

taining such streets and alleys are suitable sites for industries but can not be used, or sold to be used, for that purpose because the title is clouded by the dedication of said streets and alleys and uncertainty now exists as to the power to vacate such streets and alleys; that some industries are now considering coming into the state and purchasing such tracts if they can secure clear titles; that they might go to other states if there is delay in the taking effect of this act, which would deprive the counties of additional tax revenues badly needed by them for the preservation of the public peace, health and safety; that for said reasons it is hereby declared necessary for the preservation of the public peace, health and safety that this act shall become effective without delay. An emergency, therefore, exists and this act shall take effect and be in force from and after its passage."

Acts 1965, No. 129, § 3: Mar. 1, 1965. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relative to vacating platted streets and alleys outside municipal corporations is in a state of confusion, especially with respect to the period of nonuse which must be shown in order to vacate the same; that it is in the best interests of the citizens of this State that said law be clarified immediately, and that this Act will provide such clarification. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

14-18-101. Subdivision of lands — Filing.

(a) The owners of land lying beyond the confines of municipal corporations, which have not theretofore been subdivided as additions or subdivisions of any city or town, may have their lands surveyed and divided into numbered plots by a competent surveyor, who shall make a plat thereof.

(b) The plat, when duly certified by such surveyor, shall be filed for record with the recorder of deeds, and a copy of the plat shall be filed with the county assessor of the county in which the lands are situated.

History. Acts 1945, No. 56, § 1; 1963, No. 495, § 1; A.S.A. 1947, § 17-1201.

CASE NOTES

Evidence.

Private unauthenticated and unrecorded plat was inadmissible in condemnation proceedings where subdivision which it purported to show was not in existence, stakes were no longer in place, roads shown had not been dedicated and appar-

ently had not been built, and there was no evidence that lots had been offered for sale. *Arkansas La. Gas Co. v. Lawrence*, 239 Ark. 365, 389 S.W.2d 431 (1965).

Cited: *Butler v. City of Little Rock*, 231 Ark. 834, 332 S.W.2d 812 (1960).

14-18-102. Descriptions deemed legal.

The descriptions of the lands platted and recorded as set out in this chapter may be employed by any and all improvement districts for the purpose of assessing benefits for local improvements. These descriptions shall be legal descriptions in all deeds, mortgages, and other instruments relating to lands, or whereby the title to lands may be affected.

History. Acts 1945, No. 56, § 3; A.S.A. 1947, § 17-1203.

Publisher's Notes. As to validation of additions and subdivisions of lands pursu-

ant to Acts 1945, No. 56 and Acts 1945, No. 164, see Acts 1959, No. 289, §§ 3, 4.

CASE NOTES

Deficiencies in Descriptions.

Where a description of property was deficient in stating that it was in Township 18 North, whereas it was in Township 19 North, but the description also

contained a correct reference to the recorded plat, the mortgage description was valid as against a federal tax lien. *Caraway Bank v. United States*, 258 Ark. 858, 529 S.W.2d 351 (1975).

14-18-103. Expense of survey — Recording.

(a) The expense of surveys shall be borne by the owners of the lands affected, and the recorder shall collect the same fees for recording plats of the lands as are collected by recorders for recording plats of lands platted as subdivisions of a municipal corporation.

(b) Each plat, as filed, shall be recorded, and the recorder for identification shall number each plat consecutively upon the record.

History. Acts 1945, No. 56, § 4; A.S.A. 1947, § 17-1204.

Cross References. Recorder's fees, § 21-6-306.

14-18-104. Taxation of platted lands.

After the recordation of a plat, the lands described therein and thereon shall be assessed in accordance with the descriptions on the plat, and taxes shall be levied and collected thereon in such manner as taxes are levied and collected on real estate in cities and towns. However, nothing in this section shall be construed as authorizing the levying and collecting of a city tax on property outside the city limits.

History. Acts 1945, No. 56, § 2; A.S.A. 1947, § 17-1202.

14-18-105. Authority to vacate street, alley, or roadway.

In all cases where the owner of lands situated in a county and outside of a city of the first or second class or incorporated town has dedicated a portion of the lands as streets, alleys, or roadways by platting the lands into additions or subdivisions and causing the plat to be filed for record in the county and any street, alley, or roadway, or portion thereof shown on the plat so filed shall not have been opened or actually used as a street, alley, or roadway for a period of five (5) years, or where any strip over the platted lands, although not dedicated as a street, has been used as a roadway, the county court shall have power and authority to vacate and abandon the street, alley, or roadway, or a portion thereof, by proceeding under the conditions and the manner provided in this chapter.

History. Acts 1945, No. 164, § 1; 1965, ant to Acts 1945, No. 164, see Acts 1959, No. 129, § 1; A.S.A. 1947, § 17-1205. No. 289, §§ 1, 4.

Publisher's Notes. As to validation of the vacation of streets and alleys pursu-

14-18-106. Petition to vacate street, etc.

(a)(1) The owners of all lots and blocks abutting upon any street, alley, or roadway, or portion thereof, desired to be vacated shall file a petition in the county court requesting the court to vacate it.

(2) The petition shall clearly designate or describe the street, alley, or roadway, or portion thereof, to be vacated, give the name of the addition in which they are located and the date the plat was filed, and attach as an exhibit a certified copy of the plat.

(b)(1) Upon the filing of the petition, the county clerk shall promptly give notice, by publication once a week for two (2) consecutive weeks in some newspaper published in the county and having a general circulation therein, that the petition has been filed and that on a certain day therein named the county court will hear all persons desiring to be

heard on the question of whether the street, alley, or roadway, or portion thereof, shall be vacated.

(2) The notice shall give the names of property owners signing the petition, clearly describe the street, alley, or roadway, or portion thereof, to be vacated, and give the name of the addition in which they are located.

History. Acts 1945, No. 164, § 2;
A.S.A. 1947, § 17-1206.

14-18-107. Determination on vacation of street, etc.

(a) At the time named in the notice, the parties signing the petition and any other parties owning lots or blocks in the platted lands not abutting on the streets, alleys, or roadways, or portions thereof, to be vacated or otherwise affected by the vacation shall be heard; and the court shall determine whether the streets, alleys, roadways, or portion thereof, should be vacated as proposed in the petition.

(b) No street, alley, or roadway, or portion thereof, shall be vacated if the court finds that it would be against the interest of the public or that no means of ingress and egress would be left to any lots in the addition not abutting on them, unless the owners of the lots file their written consent to the vacation with the court.

History. Acts 1945, No. 164, § 3;
A.S.A. 1947, § 17-1207.

14-18-108. Order vacating streets, etc.

(a) If the county court shall find that the petition should be granted, either in whole or in part, it shall enter an order vacating the streets, alleys, roadways, or portions thereof.

(b)(1) The finding and order of the county court shall be conclusive on all parties having or claiming any rights or interest in the streets, alleys, roadways, or portions thereof, vacated. However, an appeal may be taken to the circuit court and perfected within thirty (30) days from the entry of the order, and an appeal may be taken from the circuit court to the Arkansas Supreme Court and perfected within thirty (30) days from the entry of the order of the circuit court.

(2) A certified copy of the order shall be filed in the office of the recorder of the county and recorded in the deed records of the county.

(c)(1) The costs of the publication of the notice, the recording of the order, and the court costs shall be paid by the petitioners.

(2) The court costs shall be paid by parties who unsuccessfully contest the petition.

History. Acts 1945, No. 164, § 4;
A.S.A. 1947, § 17-1208.

14-18-109. Abutting lots reduced to acreage.

(a) The owners of all lots abutting on the streets, alleys, or roadways, or portions thereof, vacated by an order of the county court, as provided for in § 14-18-108, shall have the right to have reduced to acreage such lots and the streets or alleys so vacated by petition to the county court where the property is situated.

(b) The county court shall promptly hear the petition and, upon proper showing that it is signed by all of the owners, shall order that the lots and streets, alleys, or roadways be reduced to acreage, and they shall thereafter be assessed as acreage for taxation of all kinds.

(c) The petition may be included in the petition for the vacation of the streets, alleys, or roadways, and the order may be included in the order vacating it, or the petition may be filed and the order entered separately.

History. Acts 1945, No. 164, § 5; A.S.A. 1947, § 17-1209. in subdivisions pursuant to Acts 1945, No. 164, see Acts 1959, No. 289, §§ 2, 4.

Publisher's Notes. As to validation of the reduction to acreage of lots and blocks

14-18-110. Validating return of platted land to acreage.

(a) In all cases where land theretofore platted into lots and blocks has been returned to acreage under the order of the county court in which the land lies and where the return to acreage did not involve the closing of any public road or thoroughfare, the action of the court in ordering the land returned to acreage and in cancelling or annulling the platting of the lands into lots and blocks is validated and affirmed.

(b) The provisions of this section shall not apply to any lands lying within the corporate limits of any town or city, nor shall it affect the title to any lands but shall merely validate the conversion of the lands from lots and blocks into acreage.

History. Acts 1943, No. 259, §§ 1, 2; A.S.A. 1947, §§ 17-1210, 17-1211.

CHAPTER 19**COUNTY BUILDINGS****SECTION.**

- 14-19-101. Commissioner of public buildings.
- 14-19-102. [Repealed.]
- 14-19-103. Plans — Contracts.
- 14-19-104. Supervision of work.
- 14-19-105. Payment of installments.
- 14-19-106. Alteration and preservation.
- 14-19-107. Replacement or repair of destroyed buildings.

SECTION.

- 14-19-108. Courthouse and jail.
- 14-19-109. Expenditure of current funds for jail facilities.
- 14-19-110. Fireproof building or vault.
- 14-19-111. Hospitals in counties having two judicial districts.

Cross References. County seats, § 14-14-301 et seq.

Exemption of realty owned by counties from adverse possession, § 22-1-204.

Execution of judgments against corporations — Attachment, § 16-66-114.

Effective Dates. Acts 1885, No. 61, § 4: effective on passage.

Acts 1927, No. 43, § 2: effective on passage.

Acts 1953, No. 414, § 4: approved Mar. 28, 1953. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that a number of hospitals in judicial districts of counties having two judicial districts are in dire financial circumstances and are unable to operate properly to insure the proper care and correct treatment of the people of said areas and that the health and welfare of the people of these areas is endangered because of these conditions and a dire need exists to remedy these wants; that the maintaining and operating of hospitals are local concerns and that those counties having two judicial districts are two separate and distinct counties so far as to local concerns; that the passage of this act is necessary to the proper maintenance and operation of hospitals and is necessary for the preservation of the health and welfare of the people of these areas. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

Acts 1972 (Ex. Sess.), No. 60, § 6: Mar. 6, 1972. Emergency clause provided: "It is hereby found and determined by the Sixty-Eighth General Assembly that the present law is not clear regarding the authority of counties to expend county general funds to match available federal funds for the construction, reconstruction or expansion of the jail facilities of such county; that under present law there is some question regarding the authority of municipalities to expend funds of the municipality to assist financially in the construction, reconstruction or expansion of the county jail facility; that federal funds are available on a matching basis for construction of jail facilities and that counties should be given specific authority

to use county general funds to match federal funds for constructing facilities in order that suitable jail facilities can be provided in the various counties; that municipalities in the State should be specifically authorized to contribute funds toward the construction, reconstruction or expansion of the county jail since the county jail is often used by certain municipalities in the county; that this authority should be granted the various counties and municipalities in the State immediately in order that such counties and municipalities may take advantage of the available federal funds for this purpose and that this Act is immediately necessary to provide such authority. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1994 (2nd Ex. Sess.), No. 64, § 7: Aug. 26, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas meeting in the Second Extraordinary Session of 1994 that some local governments have an immediate and pressing need to finance capital improvements for criminal justice projects without incurring unnecessary bond issue expenses; that until this act becomes effective, the local governments must either finance those capital improvements through bond issues or delay commencing the capital improvements which would in either case result in greater cost than using the method provided by this act and a greater threat to the general public safety from criminals; and that this act should be given effect immediately in order to minimize the amount of taxes necessary to finance capital improvements for criminal justice purposes and to insure the public safety. Therefore, in order to authorize the people of counties and cities to vote as soon as possible on the issue of levying sales taxes for capital improvements for criminal justice projects, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Waiver of competitive bidding requirements for state and local public building and construction contracts. 40 ALR 4th 968.

Amount of appropriation as limitation on damages for breach of contract recov-

erable by one contracting with government agency. 40 ALR 4th 998.

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., § 532 et seq.

C.J.S. 20 C.J.S., Counties, § 165 et seq.

14-19-101. Commissioner of public buildings.

(a)(1) When a county court shall have made an order for the erection of any public building, it shall appoint some suitable person as commissioner of public buildings, who shall superintend the erection of it.

(2) The court shall fill, from time to time, any vacancy that may happen in the office of the commissioner.

(b) The commissioner of public buildings for any county shall receive such compensation for his services as the court shall deem reasonable, to be paid out of the county treasury as other county claims are paid.

History. Rev. Stat., ch. 36, §§ 6, 7, 18; C. & M. Dig., §§ 1931, 1932, 1943; Pope's Dig., §§ 2453, 2454, 2465; A.S.A. 1947, § § 17-903, 17-904, 17-915.

CASE NOTES

Compensation.

Order of a county court appointing an assistant commissioner of public buildings where a commissioner has already been appointed and order making the former an allowance for his services were

ultra vires and void; more than one commissioner might have been appointed, but the compensation allowed can be a reasonable one for only one person. *Izard County v. Williamson*, 122 Ark. 596, 184 S.W. 420 (1916).

14-19-102. [Repealed.]

Publisher's Notes. This section, concerning sites for buildings, was repealed by Acts 1994 (2nd Ex. Sess.), No 64, § 3. The section was derived from Rev. Stat.,

ch. 36, §§ 8-10; C. & M. Dig., §§ 1933-1935; Pope's Dig., §§ 2455-2457; A.S.A. 1947, §§ 17-905 — 17-907.

14-19-103. Plans — Contracts.

(a) When the ground for erecting any public building shall be designated as indicated in § 14-19-102 [repealed], the commissioner of public buildings shall prepare and submit to the county court a plan of the building to be erected, the dimensions thereof, and the materials of which it is to be composed, with an estimate of the probable cost thereof.

(b)(1) When the plan shall be approved by the court, the commissioner shall advertise for receiving proposals for erecting the building and shall contract with the person who will agree to do the work on the lowest and best terms, not exceeding the amount so appropriated by the court.

(2) The commissioner may let parts of the work to different persons.

History. Rev. Stat., ch. 36, §§ 11, 12, 14; C. & M. Dig., §§ 1936, 1937, 1939; Pope's Dig., §§ 2458, 2459, 2461; A.S.A. 1947, §§ 17-908, 17-909, 17-911.

Cross References. Legal notices and advertisements, § 16-3-101 et seq.

Contracts for public buildings, Ark. Const., Art. 19, § 16.

CASE NOTES

Architects.

Where a county undertakes the erection of a county courthouse, it is proper for the county court to employ an architect, in

addition to the commissioner of public buildings, and to pay him a reasonable compensation. *Mississippi County v. Grider*, 126 Ark. 219, 190 S.W. 102 (1916).

14-19-104. Supervision of work.

It shall be the duty of the commissioner of public buildings to:

- (1) Superintend and direct the execution of the work;
- (2) See that the materials employed are good and the work is executed according to contract; and
- (3) Make report of the progress and condition thereof from time to time to the county court.

History. Rev. Stat., ch. 36, § 15; C. & M. Dig., § 1940; Pope's Dig., § 2462; A.S.A. 1947, § 17-912.

Observation by registered professionals required of professional engineer, § 22-9-101.

Cross References. Public works —

14-19-105. Payment of installments.

(a) When any installment shall become due to the contractor according to contract, the county court shall make an order that it be paid out of the county treasury.

(b) No such order shall be made, except on the certificate of the commissioner of public buildings, that due proportion of the work has been completed and executed according to contract.

History. Rev. Stat., ch. 36, §§ 16, 17; §§ 2463, 2464; A.S.A. 1947, §§ 17-913, C. & M. Dig., §§ 1941, 1942; Pope's Dig., 17-914.

CASE NOTES

Executed According to Contract.

A county court cannot make an order for the payment of any amount contracted to be paid for the building of a courthouse or

jail before any part of the contract is performed. *Armstrong v. Truitt*, 53 Ark. 287, 13 S.W. 934 (1890).

14-19-106. Alteration and preservation.

The county court shall have power, from time to time, to alter, repair, or rebuild any county building which has been erected in their county and may cause necessary buildings and fixtures to be erected, as circumstances may require and the funds of the county may admit. It

shall, moreover, take such measures as shall be necessary to preserve all buildings and property of the county from waste or damage.

History. Rev. Stat., ch. 36, § 19; C. & M. Dig., § 1944; Pope's Dig., § 2466; A.S.A. 1947, § 17-916.

14-19-107. Replacement or repair of destroyed buildings.

(a)(1) In every case where any public buildings belonging to any county in this state have been destroyed by fire, or otherwise, and the loss of the building calls for speedy and prompt action for repair or rebuilding thereof, the county judge of the county may hold a special term of the county court for the purpose of taking such action and making such provisions as shall be proper for repairing or rebuilding the destroyed property.

(2)(A) Notice of the meeting of the court shall be published ten (10) days by advertisement in some newspaper printed in the county.

(B) If there is no such paper, the publication shall be by written notices posted at some public place at the county site of the county and at nine (9) other public places in the county, ten (10) days before the convening of such court.

(b) In all cases provided for in subsection (a) of this section, the court for levying the county taxes and making appropriations for county purposes may convene in special session at such time as the county judge may name in a call for the meeting of the court. This call shall be published for the length of time and in the manner provided for the special terms of the county court as named in subsection (a) of this section.

(c)(1)(A) When so convened in special session, the county court and court for levying county taxes and making appropriations for county purposes shall have all the powers, right, and authority of the same courts when held at the times fixed by law.

(B)(i) The county court may let contracts, and the levying courts may make appropriations and levy taxes.

(ii) Either or both of the courts may take any and all steps proper in the premises to the same extent and with like effect as if done in regular term.

(2)(A) The courts may adjourn from day to day and from time to time until the business for which they were convened is completed.

(B) A minority of the levying court, when so convened, shall have the right to adjourn from day to day until a quorum is secured as provided for in the law governing the court.

History. Acts 1885, No. 61, §§ 1-3, p. 84; C. & M. Dig., §§ 1945-1947; Pope's Dig., §§ 2474-2476; A.S.A. 1947, §§ 17-917 — 17-919.

CASE NOTES

ANALYSIS

In general.
Applicability.
Temporary facilities.

In General.

Upon courthouse being destroyed by fire, county court had authority to direct erection of new building for use of the courts of the district. *Law v. Falls*, 109 Ark. 395, 159 S.W. 1130 (1913).

Applicability.

This section relates solely to repair or replacement of public buildings. *Cleveland County v. Pearce*, 171 Ark. 1145, 287 S.W. 593 (1926).

Temporary Facilities.

When courthouse has been destroyed by fire, the court may lawfully be held in a temporary courthouse. *Lee v. State*, 56 Ark. 4, 19 S.W. 16 (1892).

14-19-108. Courthouse and jail.

(a) There shall be erected in each county, at its established seat of justice, a good and sufficient courthouse and jail.

(b) The quorum court may, by a majority vote, or by referral to a vote of the people, determine the location of the jail facility at some location other than the established seat of justice.

History. Rev. Stat., ch. 36, § 1; C. & M. Dig., § 1929; Pope's Dig., § 2451; A.S.A. 1947, § 17-901; 1994 (2nd Ex. Sess.), No. 64, § 2.

Amendments. The 1994 (2nd Ex. Sess.) amendment added (b).

Cross References. County bonds for construction of courthouses and jails, § 14-72-301 et seq.

County houses of correction, § 12-41-301.

CASE NOTES

ANALYSIS

In general.
Contracts.
Designation of place.
Duties of commissioners.
Examination and approval.
Funding.

In General.

County court had continuing control over an order to build a courthouse that extends beyond the close of the term. *Craig v. Griffin*, 107 Ark. 298, 154 S.W. 945 (1913).

County court could revoke order to build a courthouse at a subsequent term, subject to contractual liabilities incurred under the former order. *Jennings v. Fort Smith Dist.*, 115 Ark. 130, 171 S.W. 920 (1914).

Contracts.

Validity of contract for building courthouse was not affected by former statute similar to § 14-20-106, relating to limita-

tions on contracts by quorum or levying courts. *Durritt v. Buxton*, 63 Ark. 397, 39 S.W. 56 (1897); *Sadler v. Craven*, 93 Ark. 11, 123 S.W. 365 (1909).

Remedy of taxpayers where county court had proceeded irregularly to contract for building a courthouse was by becoming a party to the proceedings and then appealing. *Bowman v. Frith*, 73 Ark. 523, 84 S.W. 709 (1905); *Sadler v. Craven*, 93 Ark. 11, 123 S.W. 365 (1909).

Necessary changes in a contract for building a courthouse may be made. *Shackleford v. Campbell*, 110 Ark. 355, 161 S.W. 1019 (1913).

Where county judge contracted with an architect to draw plans for a county jail, but no order of the county court appointing an architect was made nor was any appropriation ever made to pay for the work, it was held that, although bids were taken and a contract let, the architect was not entitled to any compensation under his contract with the county judge.

Klingensmith v. Logan County, 116 Ark. 65, 171 S.W. 1191 (1914).

Designation of Place.

A county court has no authority to order the erection of a county courthouse upon land that does not belong to the county. Jennings v. Fort Smith Dist., 115 Ark. 130, 171 S.W. 920 (1914).

A county court is authorized to select and purchase a site for a courthouse, if necessary, and a quorum court is only authorized to determine when the courthouse shall be built, the amount of expenditure, and the manner of payment. Ivy v. Edwards, 174 Ark. 1167, 298 S.W. 1006 (1927).

Under former Ark. Const. Amend. 17, a hospital did not have to be located at the seat of justice. Kervin v. Hillman, 226 Ark. 708, 292 S.W.2d 559 (1956).

Duties of Commissioners.

An appropriation by the levying court to build a county hospital carries authority to purchase ground on which to build it. Kerwin v. Caldwell, 80 Ark. 280, 96 S.W. 1058 (1906).

A commissioner of public buildings is required to select a proper piece of ground at the seat of justice, and may purchase or receive by donation a lot of ground for the purpose of erecting public buildings. Jeffries v. State ex rel. Woodruff County, 212 Ark. 213, 205 S.W.2d 194 (1947).

A county court has authority to purchase a site for a county hospital. Bond v.

Kennedy, 213 Ark. 758, 212 S.W.2d 336 (1948).

A commissioner of public buildings is required to select a proper piece of ground for the erection of public buildings and take a good and sufficient deed in fee simple, if the county has no land suitable for the use intended. Bond v. Kennedy, 213 Ark. 758, 212 S.W.2d 336 (1948).

Examination and Approval.

Where a county court orders that proceedings be instituted to determine the right of a county to erect a courthouse on a certain piece of property, the county commissioner cannot make any valid contract looking to the erection of a courthouse until the title to the site upon which it is proposed to build is determined by a court of competent jurisdiction to be in the county. Jennings v. Fort Smith Dist., 115 Ark. 130, 171 S.W. 920 (1914).

Funding.

County court could build courthouse though no appropriation therefor had been made. Durritt v. Buxton, 63 Ark. 397, 39 S.W. 56 (1897); Bowman v. Frith, 73 Ark. 523, 84 S.W. 709 (1905); Thompson v. Mayo, 135 Ark. 143, 204 S.W. 747 (1918) (decisions prior to Ark. Const. Amend. 62).

The power to make an appropriation for a courthouse, and to fix the cost thereof, was transferred to the quorum court. Thompson v. Mayo, 135 Ark. 143, 204 S.W. 747 (1918) (decision prior to Ark. Const. Amend. 62).

14-19-109. Expenditure of current funds for jail facilities.

(a) Upon appropriation of the county quorum court, any county in this state is authorized to expend moneys in the county general fund which are not necessary to finance other county projects or services and to match available federal funds for the construction, reconstruction, or expansion of county jail facilities in the county. No vote of the electors of the county shall be necessary to authorize the construction, reconstruction, or expansion of such county jail facilities or for the expenditure of county general funds therefor if current operating funds are available for such purposes and provided further that county funds expended pursuant to the authority granted in this section are matched with an equal or greater amount of federal funds.

(b) Any county in this state and any one (1) or more municipalities in the county are authorized to cooperatively and jointly construct, reconstruct, or expand the county jail facility and to jointly and cooperatively provide the necessary funds to match available federal funds therefor.

(c)(1) The provisions of this section are intended to be supplemental and shall not be construed as in limitation or qualification of any powers or authorities conferred by other statutes or laws. In particular, but without limitation, the General Assembly recognizes, approves, and validates the practice employed and being employed by many counties of this state of carrying out the construction, reconstruction, and extension of jails, hospitals, and courthouses without seeking approval of the electors of counties when the financing of the construction, reconstruction, or extension is by a method which may include the use of funds on hand, the issuance of revenue bonds, or the use of funds obtained from other sources, public or private, but which does not include the levy of an ad valorem tax or the issuance of general obligation bonds.

(2) Further, the authority contained in this section for counties and municipalities of this state jointly to construct, reconstruct, or extend jails, and to finance them jointly, shall not be construed as in limitation or qualification of the authorities contained in other statutes or laws, including, without limitation, §§ 25-20-101 — 25-20-108.

(d) The following findings and purposes are established in interpreting legislative intent in the passage of this section:

(1) Numerous counties and cities of this state do not currently have suitable jail facilities which will conform to judicial decisions and contemporary standards for the incarceration of prisoners;

(2) Many cities and counties have exhausted their available taxing powers for the construction of new or improved jails, or find it impossible to obligate their remaining taxing powers for such purposes without jeopardizing the funding of other available government functions;

(3) In order to promote efficiency in the operations of government and to reduce the overall cost to the taxpayers of providing jail facilities, it is declared to be the policy of the State of Arkansas to encourage efforts by cities and counties to jointly construct and operate jail facilities to serve their respective jurisdictions;

(4) That the federal government has embarked on various programs to provide financial assistance to cities and counties in upgrading jail facilities and it is of benefit to the State of Arkansas to enable cities and counties to gain the advantages of available federal funds for jail construction and improvements;

(5) That a number of cities and counties of this state have, or will have, available surplus funds which could be used to defray the necessary city and county matching share in obtaining federal matching moneys for jail improvements without jeopardizing existing operating programs and without the necessity to incur additional bonded indebtedness to provide or to replace these moneys;

(6) The General Assembly is aware of the provisions of Arkansas Constitution, Amendment 17, [repealed] which permits the majority of the electors in a county voting on the question to authorize the construction, reconstruction, or extension of a county jail and to levy a

tax not to exceed one half of one percent ($\frac{1}{2}$ of 1%) on the dollar to defray the cost and expense thereof, and the General Assembly is further aware that the purpose of this amendment was to prohibit counties from undertaking the construction or improvement of jails without approval of the people with respect to the funding of bonded indebtedness therefor. The General Assembly is further aware of the fact that prior to the adoption of Amendment 17 in 1928 many counties were engaged in programs of deficit spending, but subsequent thereto, the enactment of state auditing laws and other fiscal controls governing county spending prohibit deficit spending by a county. Therefore, the General Assembly concludes that counties of this state should be permitted to use available surplus operating moneys to construct or make necessary improvements to county jails or jails constructed and operated jointly by the county and one or more cities therein so long as the funds are made available from the current revenues of the county and are not construed a debt or obligation of the county in the following fiscal years. Therefore, it is the opinion of the General Assembly that Amendment 17 should be liberally construed to require a vote of the majority of the electors of the county in approving the construction, reconstruction, or extension of the county jail under those circumstances where the construction thereof cannot be accomplished by the expenditure of operating funds currently available and where the construction will require deficit financing or the pledge of property taxes to defray the cost of such construction or indebtedness incurred in connection therewith;

(7) It is the declaration of the General Assembly that the intent of the citizens of Arkansas in adopting Amendment 17 [repealed] should be interpreted so that approval of the electors of the county to maintain, repair, construct, reconstruct, or extend a county jail or a county and municipal owned or operated jail is not required where moneys used for such improvements are made available from noncounty funds or from existing surplus funds of the county which are not required for other purposes and which can be made available from the current revenues of the county in the fiscal year in which the same are provided;

(8) It is, therefore, the purpose of this section to clarify the intent of Amendment 17 [repealed] in order to enable counties which have surplus operating revenues to use them to match federal funds to defray the county portion of the cost of matching federal or matching funds made available by one or more municipalities in the county to defray the cost of construction or renovation of a jail so long as the portion of county funds may be made available from surplus revenues of the year in which they are provided without obligating revenues of any other succeeding year.

History. Acts 1972 (Ex. Sess.), No. 60, §§ 1-4; A.S.A. 1947, §§ 17-924, 17-924n, 17-925, 17-926.

A.C.R.C. Notes. Arkansas Const. Amend. 62, § 11, provides that all provi-

sions of the Arkansas Constitution, or amendments thereto, in conflict with Ark. Const. Amend. 62, including Ark. Const. Amends. 17 and 49, are repealed.

CASE NOTES

Cited: Johnson v. Cummings, 281 Ark. 229, 663 S.W.2d 168 (1984).

14-19-110. Fireproof building or vault.

As soon as the courthouse and jail shall be erected and the circumstances of the county will permit, there shall also be erected a fireproof building at some convenient place near the courthouse or a fireproof vault in the courthouse, in which shall be kept the records of the recorder and of the clerks of the several courts held in the county.

History. Rev. Stat., ch. 36, § 2; C. & M. Pope's Dig., § 2452; A.S.A. 1947, § 17-Dig., § 1930; Acts 1927, No. 43, § 1; 902.

14-19-111. Hospitals in counties having two judicial districts.

(a)(1) In all counties which are divided into two (2) judicial districts, either by the Arkansas Constitution or by legislative enactment, the qualified electors of the county residing in each judicial district of a county so divided shall have and are vested with all the powers and rights for the judicial district that the qualified electors of counties have for the entire county for the purposes authorized by Arkansas Constitution, Amendment 32, and may authorize the maintaining, operating, and supporting of a county hospital in the judicial district and may authorize the levy of a tax not to exceed one (1) mill on the dollar of the assessed value of real and personal property in the county.

(2) No tax shall be levied on any property within the county or judicial district for the purposes authorized by the Arkansas Constitution and this section in excess of the total tax authorized by the Arkansas Constitution.

(b) It has been found and is declared by the General Assembly that the maintaining, operating, and supporting of a county hospital is a local concern, and, for the purposes of this section, the judicial districts of the counties are deemed and are declared by the General Assembly to be separate and distinct counties.

History. Acts 1953, No. 414, §§ 1, 2; A.S.A. 1947, §§ 17-922, 17-923.

CHAPTER 20

QUORUM OR LEVYING COURTS

SECTION.

14-20-101. Prohibition of and punishment for offenses.

14-20-102. County funds for defense of indigents — Fees assessed.

SECTION.

14-20-103. Appropriations to be specific — Limitation.

14-20-104. Appropriations and allowances.

14-20-105. Monthly treasurer's report.

SECTION.

- 14-20-106. Limitations on contracts.
- 14-20-107. Appropriations for Association of Arkansas Counties.
- 14-20-108. Dues for volunteer fire departments.
- 14-20-109. Rural solid waste disposal services.
- 14-20-110. Marriage officials.
- 14-20-111. Marriage license fee.

SECTION.

- 14-20-112. County gross receipts tax on hotels and restaurants.
- 14-20-113. Collection of delinquent taxes.
- 14-20-114. Extension of levies on tax books.
- 14-20-115. [Repealed.]
- 14-20-116. Youth accident prevention program.

Effective Dates. Acts 1917, No. 217, § 5: approved Mar. 10, 1917. Emergency clause provided: "This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared, and this Act shall take effect and be in force from and after its passage."

Acts 1969, No. 92, § 5: became law without Governor's signature, Feb. 24, 1969. Emergency clause provided: "It has been found and is hereby declared by the General Assembly: (a) that although funds have been appropriated from time to time for making studies of ways and means to improve the operation of the state government, no funds have ever been appropriated for making studies of ways and means to improve the operation of county government in this State; (b) that such county studies should be made for the purpose aforesaid, and that the same should be instituted at the earliest possible time; and (c) that only by the immediate passage and approval of this Act may the association be assured of adequate financing so that it may make and complete its plan of operation not later than the date on which the funds first become available. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public health, peace and safety shall take effect and be in full force from and after its passage and approval."

Acts 1975, No. 130, § 21: Jan. 1, 1977.

Acts 1977, No. 178, § 8: Feb. 17, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain cities within the State are in dire need of additional funds to provide essential services and facilities of the city; that the most appropriate way for such cities to increase revenues for this

purpose is the levy of an increased gross receipts tax on the gross receipts derived from certain business within the city; that this Act is designed to specifically authorize the levy of a gross receipts tax or an additional gross receipts tax to provide much needed revenues to the levying city and should be given effect at the earliest possible date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 495, § 3: Mar. 18, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that some confusion has arisen regarding the responsibility for collection of delinquent taxes in the various counties; that it is essential to the proper financing of the counties, cities, and school districts in the counties that appropriate action be taken to assure that delinquent taxes are collected at the earliest possible date; that the quorum court is the appropriate body in each county to determine who should have the responsibility for collecting delinquent taxes; that this Act is designed to give the quorum court the authority and responsibility to provide for the collection of such taxes. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 465, § 4: Mar. 10, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to the phasing out of revenue sharing by the federal government, many counties are faced with insufficient revenues to offer necessary services; that this act will provide the county

with an optional source of revenue by collection of the additional fee; that the immediate passage of this act is necessary to insure that necessary services are not interrupted. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 904, § 28: Mar. 29, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the language of certain court cost statutes lacks uniformity; that such lack of uniformity is detrimental to the proper collection of such court costs; and that such language should be standardized to promote the proper collection of such costs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1003, § 5: Apr. 8, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the quorum court of any county should be authorized to appropriate monies from its general fund to pay the reasonable cost incurred in the defense of indigents; that this Act so provides; and that this Act should go into effect immediately in order to provide a mechanism to protect the constitutional rights of indigent defendants. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1193, § 21: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that the decision of the Arkansas Supreme Court in *State v. Post et al*, Case No. 92-787, has created great uncertainty regarding the payment of the legal fees and expenses in connection with the legal representation of indigent persons charged with crimes punishable by imprisonment and that delay in the effective date of this act beyond July 1, 1993, would cause irreparable harm to the proper implementation of a statewide public defender program. Therefore, and

emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1995 (1st Ex. Sess.), No. 13, § 13: Oct. 23, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the current system of funding the state judicial system has created inequity in the level of judicial services available to the citizens of the state; and it is further determined that the current method of financing the state judicial system has become so complex as to make the administration of the system impossible, and the lack of reliable data on the current costs of the state judicial system prohibits any comprehensive change in the funding of the system at this time. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 711, § 5: Mar. 20, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that devastating tornadoes and flooding recently occurred in several counties of the state; that several of the affected counties have been declared disaster areas by the Governor; that as a result of the tornadoes and flooding, considerable expenditures will be required of the counties to clean and repair streets, to dispose of debris, to repair or replace county facilities and equipment damaged or destroyed, and to cover other necessary expenses occasioned by the natural disaster; that under present law, the county quorum court may not appropriate more than ninety percent of anticipated revenues for the year; and that it is the intent and purpose of this act to permit the appropriation and expenditure for disaster related expenses of all or a portion of the ten percent reserve otherwise required and that this act should be given effect immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the

expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

14-20-101. Prohibition of and punishment for offenses.

(a) A county is authorized to prohibit and punish any act, matter, or thing which the laws of this state make a misdemeanor and to prescribe penalties for all offenses in violation of any ordinance of the county not greater nor less than the penalties prescribed for similar offenses against the laws of this state.

(b) Upon conviction of any person under such ordinance by any court, the conviction shall operate as a bar to further prosecution in any of the courts of this state for the same offense.

History. Acts 1975, No. 130, § 15;
A.S.A. 1947, § 17-443.

14-20-102. County funds for defense of indigents — Fees assessed.

(a)(1) There is hereby created on the books of the treasurer of each county in the state a fund to be used for the purpose of paying reasonable and necessary costs incurred in the defense of indigent persons accused of criminal offenses and in the representation of persons against whom involuntary admissions procedures for mental health or alcohol and narcotic commitments or criminal commitments have been brought, and for representation in civil and criminal matters of persons deemed incompetent by the court due to minority or mental incapacity, which have been brought in any circuit courts, chancery courts, juvenile courts, probate courts, or city or county division of municipal courts, including, but not limited to, investigative expenses, expert witness fees, and legal fees.

(2) Where there are adequate unappropriated moneys in this fund, the quorum court may also provide for the use of the funds for the purpose of defraying the cost of the juvenile division of chancery court.

(3) Where there are adequate unappropriated moneys in this fund, the quorum court may also provide for the use of the funds for the purpose of defraying the cost of medical and dental costs incurred by the county for indigent defendants incarcerated in the county jail.

(4) The quorum court is authorized to supplement the fund by additional appropriation from the county general fund, and expenditures from such fund shall be made in the manner and amounts prescribed by the quorum court.

(b) [Repealed.]

(c) In any county where a public defender commission has been established under §§ 16-87-101 — 16-87-112, the amount to be paid for attorney fees, investigative costs, and other costs under subdivision (a)(1) of this section shall be determined in a manner prescribed by the

quorum court acting with the advisory resolution of the public defender commission.

(d) [Repealed].

History. Acts 1983, No. 695, §§ 1-3; A.S.A. 1947, §§ 17-456 — 17-458; Acts 1987, No. 96, § 1; 1989, No. 406, §§ 1, 2; 1989 (3rd Ex. Sess.), No. 100, § 1; 1991, No. 904, §§ 4, 20; 1991, No. 1003, § 1; 1993, No. 1193, § 15; 1995, No. 1256, § 20; 1995 (1st Ex. Sess.), No. 13, § 4.

A.C.R.C. Notes. Pursuant to Acts 1971, No. 153, references to “mayor’s courts” in this section were deleted.

Amendments. The 1993 amendment

rewrote (a)(1); deleted former (a)(2) and redesignated former (a)(3) and (4) as (a)(2) and (3), respectively; added present (a)(4); rewrote (b); deleted former (c); redesignated former (d) as (c); inserted present (d); and deleted former (e).

The 1995 amendment by No. 1256, as amended by Acts 1995 (1st Ex. Sess.), No. 13, § 4, repealed (b) and (d).

The 1995 amendment by Acts 1995 (1st Ex. Sess.), No. 13, § 4, repealed (d).

RESEARCH REFERENCES

UALR L.J. Arkansas Law Survey, Joiner, Criminal Procedure, 8 UALR L.J. 123.

Survey — Attorneys, 10 UALR L.J. 539.

CASE NOTES

Fee Cap.

Ordinance enacted pursuant to this section containing fee caps similar to those contained in § 16-92-108 (repealed), held

invalid. *State v. Post*, 311 Ark. 510, 845 S.W.2d 487 (1993).

Cited: *State v. Independence County*, 312 Ark. 472, 850 S.W.2d 842 (1993).

14-20-103. Appropriations to be specific — Limitation.

(a) The county quorum court shall specify the amount of appropriations for each purpose in dollars and cents, and except as authorized in subsection (c) of this section, the total amount of appropriations for all county or district purposes for any one (1) year shall not exceed ninety percent (90%) of the anticipated revenues for that year, except for federal or state grants overseen by counties which the court may appropriate up to one hundred percent (100%) of the anticipated revenues for that year.

(b) For revenues to qualify as a grant under this section the county must demonstrate that the state or federal agency characterized the revenues as a grant.

(c) In any county in which a natural disaster, including but not limited to a flood or tornado, results in the county being declared a disaster area by the Governor of the state or an appropriate official of the United States Government, the quorum court of the county may appropriate in excess of ninety percent (90%) of anticipated revenues. Provided, any appropriation of funds in excess of ninety percent (90%) of anticipated revenues shall be made only for street cleanup and repair, collection, transportation and disposal of debris, repair or replacement of county facilities and equipment, and other projects or costs directly related to or resulting from the natural disaster.

History. Acts 1879, No. 77, § 7, p. 109; C. & M. Dig., § 1985; Pope's Dig., § 2530; Acts 1973, No. 128, § 1; A.S.A. 1947, § 17-411; Acts 1989, No. 141, § 1, 1991, No. 60, § 1; 1997, No. 711, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation errors in this section.

Publisher's Notes. Acts 1879, No. 77, § 14, provided that nothing in the act shall be so construed as to enlarge the functions or powers of the County Court of Sebastian County as under existing laws.

Amendments. The 1997 amendment inserted "except as authorized in subsection (c)" in (a); and added (c).

Cross References. Appropriation ordinances, § 14-14-907.

County or city Hospital tax, Ark. Const. Amend. 32.

Limitation on county tax levy, § 26-25-101.

County library tax, Ark. Const. Amend. 38.

CASE NOTES

Limitation.

This section does not prevent a court from also appropriating the revenue accruing to a county from fines, forfeitures, and licenses. *Allis v. Jefferson County*, 34 Ark. 307 (1879).

This section does not inhibit a county court from appropriating all the county funds derived from any source after reserving 10 percent of the current tax levy. *Kerwin v. Caldwell*, 80 Ark. 280, 96 S.W. 1058 (1906).

An appropriation of more than 90 percent is good on collateral attack in the absence of any showing that the county had no funds derived from other sources. *Fussell v. Mallory*, 97 Ark. 465, 134 S.W. 631 (1911).

The limitation applies to current or ordinary expenses, not to appropriations for building courthouses. *Thompson v. Mayo*, 135 Ark. 143, 204 S.W. 747 (1918).

14-20-104. Appropriations and allowances.

(a) Every order of allowance made by the county court shall set forth the appropriation out of which it is to be paid.

(b) It shall be the duty of the clerk annually, and immediately after the adjournment of the county quorum court for the levy of taxes and the making of the appropriations, to open a book to be kept for that purpose, in which he shall debit each appropriation by the amount appropriated therefor, and as the allowances are made by the county court, he shall credit each appropriation by the allowance ordered to be paid out of such appropriation.

History. Acts 1879, No. 77, §§ 8, 12, p. 109; C. & M. Dig., §§ 1986, 1989; Pope's Dig., §§ 2531, 2534; A.S.A. 1947, §§ 17-412, 17-414.

Publisher's Notes. Acts 1879, No. 77,

§ 14, provided that nothing in the act shall be so construed as to enlarge the functions or powers of the County Court of Sebastian County as under existing laws.

CASE NOTES

ANALYSIS

Allowances.
Appropriations.

Allowances.

It is the duty of a clerk to issue warrants on allowances when made. *Worthen v. Roots*, 34 Ark. 356 (1879).

A county court is not prohibited from allowing claims against the county in excess of appropriations. *Worthen v. Roots*, 34 Ark. 356 (1879).

An assessment of benefits received by the public roads in a drainage district, although approved by the county court, is not a judgment against the county, rather, it is the basis of a claim against it. *Rolfe v. Spybuck Drainage Dist. No. 1*, 101 Ark. 29, 140 S.W. 988 (1911).

Appropriations.

There is no provision in law allowing a quorum court to turn over to a county judge a sum of money "to use as he sees fit and deems necessary," and such an appropriation is invalid. *Martin v. Bratton*, 223 Ark. 159, 264 S.W.2d 635 (1954).

Cited: *Lake v. Tatum*, 175 Ark. 90, 1 S.W.2d 554 (1927).

14-20-105. Monthly treasurer's report.

The county treasurer shall submit each month to the county quorum court a full report and a detailed statement of the financial condition of the county, showing receipts, disbursements, and balance on hand.

History. Acts 1975, No. 130, § 20; A.S.A. 1947, § 17-448; Acts 1987, No. 724, § 1; 1995, No. 232, § 3.

Amendments. The 1995 amendment deleted "and to the prosecuting attorney

and deputy prosecuting attorney of the judicial district in which the county is located" following "court"; and deleted "together with all liabilities of the county" from the end.

14-20-106. Limitations on contracts.

No county court or agent of any county shall make any contract on behalf of the county unless an appropriation has been previously made therefor and is wholly or in part unexpended. In no event shall any county court or agent of any county make any contract in excess of any appropriation made, and the amount of the contract shall be limited to the amount of the appropriation made by the county quorum court.

History. Acts 1917, No. 217, § 3, p. 1184; C. & M. Dig., § 1976; Pope's Dig., § 2505; A.S.A. 1947, § 17-416.

Publisher's Notes. For amendment of

and deputy prosecuting attorney of the judicial district in which the county is located" following "court"; and deleted "together with all liabilities of the county" from the end.

Cross References. Contracts in excess of revenues prohibited, § 14-23-107.

CASE NOTES

ANALYSIS

Purpose.
Applicability.
Appropriations.
Authority of county judge.
Essential services.
Particular contracts.
Warrants.

Purpose.

Purpose of this section is to withdraw from a county court the power to make an order to build a courthouse if deemed expedient and if the circumstances of the county would permit a levy of taxes for

that purpose. *Thompson v. Mayo*, 135 Ark. 143, 204 S.W. 747 (1918).

Applicability.

The circuit clerk of Madison County was authorized to purchase a typewriter, this section having no applicability to that county. *Madison County v. Simpson*, 173 Ark. 755, 293 S.W. 34 (1927).

Appropriations.

This section invests quorum court with power to make an appropriation for building a courthouse in any sum it may deem proper, regardless of the amount of taxes to be levied and of an appropriation for

this purpose. *Thompson v. Mayo*, 135 Ark. 143, 204 S.W. 747 (1918).

An allowance by the county court for a street improvement out of a special bridge fund on hand was not invalid by reason of the fact that the county court agreed to make additional allowances out of the revenues of future years. *Shofner v. Dowell*, 168 Ark. 229, 269 S.W. 588 (1925).

Resolution of county quorum court appropriating money for street improvement in aid of an improvement district and reciting that the necessity for the appropriation arose from the state's failure to bear its share of the proposed improvement, was a mere expression of the court's opinion as to the state's duty, and the appropriation was proper, as the streets to be improved were part of the county highway system. *Shofner v. Dowell*, 168 Ark. 229, 269 S.W. 588 (1925).

Appropriation by county quorum court for expenses of county judge other than for current year, is void. *Ladd v. Stubblefield*, 195 Ark. 261, 111 S.W.2d 555 (1937).

Authority of County Judge.

County judges have no authority to make contracts on behalf of a county, such authority being conferred upon the county courts. *Lyons Mach. Co. v. Pike County*, 192 Ark. 531, 93 S.W.2d 130 (1936).

Furnisher of item under contract entered into by county judge, never approved by county court, is not entitled to recover on quantum meruit where county never accepts the items or makes claim to them, even though county judge accepts delivery and stores the shipment on county property. *Lyons Mach. Co. v. Pike County*, 192 Ark. 531, 93 S.W.2d 130 (1936).

Essential Services.

Arkansas Const. Amend. 10 was not effective to prevent county court from allowing claims for essential and indispensable government services although in excess of appropriation. *Mackey v. McDonald*, 255 Ark. 978, 504 S.W.2d 726 (1974).

Particular Contracts.

Although county court could not lawfully make a contract for the purchase of road machinery until an appropriation had been made for that purpose, yet when an appropriation for such purchase had been made after the purchase and the

machinery was delivered to the county and kept by it, it could not defeat a recovery for the purchase money of the machinery. *International Harvester Co. v. Searcy County*, 136 Ark. 209, 206 S.W. 312 (1918).

In the absence of an appropriation, a sheriff is without authority to purchase a supply of items on behalf of the county and the county judge cannot make a contract on his own motion to purchase the items nor ratify a contract for them made by the sheriff. *American Disinfecting Co. v. Franklin County*, 181 Ark. 659, 27 S.W.2d 95 (1930).

Contract employing lawyers on a contingent basis, to be paid out of adjustments and settlements of amounts due the county, is not forbidden by this section where no appropriation is made for this purpose. *Botts v. Arkansas County*, 186 Ark. 981, 57 S.W.2d 563 (1933).

Even though a contract between a county and the United States would be void under the provisions of this section, where the federal government has fully performed its obligations under the contract, the county is in no position to defend on the ground of the alleged invalidity of the contract. *Cravens v. United States*, 163 F. Supp. 309 (W.D. Ark. 1958).

Contract where county agreed to hold and save federal government harmless from liability on account of inundation of roads in connection with construction of a dam could be enforced by the federal government, notwithstanding provisions of this section to the effect that contracts by county must be in consequence of valid appropriation, especially if the federal government had fully performed its obligations under the contract. *Cravens v. United States*, 163 F. Supp. 309 (W.D. Ark. 1958).

Warrants.

Warrant issued under contract of a county court for an amount in excess of the appropriation available are void. *State ex rel. Prairie County v. E.F. Leathem & Co.*, 170 Ark. 1004, 282 S.W. 367 (1927).

Where county quorum court appropriated a maximum sum for building a courthouse, requiring the one-mill levy to be paid out of the levy of five mills and by levies to be paid each year covering all the expenses of government and not in excess of five-mill levy, there was no continuing levy of one mill annually for courthouse

construction, and warrants should not be drawn on a specific fund, but on the general county fund out of which the appropriation was made. *Ivy v. Edwards*, 174 Ark. 1167, 298 S.W. 1006 (1927).

Cited: *Dean Leasing, Inc. v. Van Buren County*, 27 Ark. App. 134, 767 S.W.2d 316 (1989).

14-20-107. Appropriations for Association of Arkansas Counties.

(a)(1) The quorum courts of each county in this state may provide for the participation of their county in the services and activities of the Association of Arkansas Counties, a domestic corporation organized and existing under the provisions of the Arkansas Nonprofit Corporation Act, §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-223.

(2) If the quorum court of a county authorizes the participation of the county in this association, then the quorum court shall annually appropriate from county general funds an amount which shall be equal to one percent (1%) of the general revenues received by that county from the County Aid Fund in the State Treasury during the preceding fiscal year.

(3) Participation by each county in this association shall be optional with the quorum court of each of the respective counties as provided in this section.

(b)(1) The funds so received by the association shall be used exclusively by it to finance the object of its existence, namely, to aid in the improvement of county government in the State of Arkansas.

(2) All funds so received by the association shall be subject to audit by the State of Arkansas, and this association shall make available to the auditors, at all reasonable times, all books, files, and records concerning such funds.

(c) Moneys appropriated by the court as the county's contribution to this association shall be paid to the association during the month of July for the fiscal year commencing on July 1 and ending on June 30 next following.

(d) This association is recognized as the official agency of the counties of this state to receive funds and use them for making a continuing study of ways and means to improve county government in Arkansas.

History. Acts 1969, No. 92, §§ 1-4;
A.S.A. 1947, §§ 17-425 — 17-428.

14-20-108. Dues for volunteer fire departments.

(a)(1) The quorum court of each county may, upon request therefor filed with the court by one (1) or more volunteer fire departments in the county, adopt an ordinance authorizing a designated county official to collect and remit to the department the annual or quarterly dues charged by the department in consideration of providing fire protection to unincorporated areas in the county.

(2) The ordinance enacted by the court shall set forth the terms and conditions on which such dues are to be collected by the county and for the remission of the dues to the volunteer fire departments.

(3) Provided, however, active members of the volunteer fire departments whose annual or quarterly dues are collected in this manner may, at the discretion of the volunteer fire department, be exempt from the annual or quarterly dues charged by the department in consideration of providing services to the department.

(b)(1) The court may, by majority vote, designate the geographical area that a volunteer fire department may serve and may then direct that the property owners of the area pay dues to be established by the court, which shall become a lien upon the property within the geographical area.

(2) Upon request by a volunteer fire department, the quorum court of each county involved may authorize a volunteer fire department to serve a geographical area to extend across the county boundary lines.

(c) The court may establish its own countywide fire department, either regular or voluntary.

(d) This section does not change the authority of intergovernmental cooperation councils to enter into reciprocal agreements or to distribute funds under §§ 14-284-401 et seq. and 26-57-614.

History. Acts 1977, No. 512, § 1; A.S.A. 1947, § 17-455; Acts 1991, No. 1038, § 1; 1995, No. 744, § 1.

Cross References. Civil immunity of volunteer firefighters, § 16-5-101.

Amendments. The 1995 amendment added (b)(2) and (d).

14-20-109. Rural solid waste disposal services.

(a)(1) The quorum court of each county is authorized to establish garbage and trash collecting services, solid waste disposal facilities, and similar services for the benefit of the rural residents of the counties to provide, for such rural residents, services comparable to those provided within cities and unincorporated towns.

(2)(A)(i) The court may assess reasonable fees to be paid by each property owner, or renter of property, benefiting from such services.

(ii) The courts shall establish the amount of such fees and the methods of collection thereof.

(B) The courts may authorize the counties to contract with one (1) or more public utilities or municipally owned and operated utilities within the cities and towns of the county to collect the fees to be remitted to the county, after retaining therefrom a reasonable service charge agreed to by the court and the city or town to defray the cost of collecting the fees.

(b) The provisions of this section shall be supplemental to the existing laws of this state governing the powers and duties of the quorum courts and are intended to repeal only such laws or parts of laws specifically in conflict with it.

History. Acts 1977, No. 473, §§ 1, 2; A.S.A. 1947, §§ 17-453, 17-454.

CASE NOTES

Cited: Arkansas County v. Burris, 308 Ark. 490, 825 S.W.2d 590 (1992).

14-20-110. Marriage officials.

The county quorum courts may appoint special officials to solemnize marriages within their respective counties. However, the maximum number of such officials shall not exceed two (2) per ten thousand (10,000), or fraction thereof, population in the county as determined by the last census.

History. Acts 1977, No. 95, § 1; A.S.A. 1947, § 17-449.

14-20-111. Marriage license fee.

(a) The quorum court of any county may levy, in addition to fees and taxes now charged, a fee not to exceed five dollars (\$5.00) on each application for a marriage license. Such a fee shall be collected by the county clerk at the time application is made.

(b) All fees collected under the provisions of this section shall be credited by the county treasurer to the county general fund and shall be appropriated by the quorum court as provided by law.

History. Acts 1953, No. 45, § 1; A.S.A. 1947, § 17-423; 1989, No. 465, § 1. Other marriage license fee provisions, §§ 16-14-105 and 20-7-123.

Cross References. Marriage license fee, § 21-6-406.

14-20-112. County gross receipts tax on hotels and restaurants.

(a)(1) Any county in which there is located a city that levies a two percent (2%) gross receipts tax on hotels, motels, and restaurants as authorized in §§ 26-75-601 — 26-75-613 may, by ordinance of the county quorum court, levy a like tax at the same rate as the levying city or at a lesser rate upon the furnishing of hotel and motel accommodations and upon the gross receipts of restaurants and similar establishments located within the county outside the boundaries of the levying municipality.

(2) The court levying a tax by ordinance as authorized in this section shall submit the question of the levying of such a tax to the electors of the county if petitions requesting it are filed. The petitions must be signed by not less than five hundred (500) electors of the county and must be filed with the court within thirty (30) days after the adoption of the ordinance levying the tax.

(b)(1) When any county levies the tax authorized in this section, the tax so levied shall be paid by the persons, firms, and corporations liable therefor and shall be collected by the levying county in the same manner and at the same time as the gross receipts tax levied by § 26-52-101 et seq.

(2)(A)(i) The quorum court levying such tax and the governing body of the city levying a like tax may enter into an agreement whereby the tax levied by the county will be collected by the city.

(ii) If the tax levied by the county is collected by the city, all revenues derived from the tax shall be deposited in the city advertising and promotion fund.

(B) If the tax is collected by the levying county, all revenues derived from the tax, after deducting an amount equal to the cost of collecting it, shall be deposited in the advertising and promotion fund of the city located within the county that levies a like tax.

(C) All such funds deposited in the city advertising and promotion fund shall be used for the purposes prescribed in §§ 26-75-601 — 26-75-613.

(c) When any county levies a tax as authorized in this section, the tax shall be reported and remitted in the manner and on forms prescribed by the county or the city, and the provisions of § 26-52-101 et seq., relating to rules, regulations, forms of notice, assessment procedures, and the enforcement and collection of the Arkansas gross receipts tax shall be applicable with respect to the enforcement and collection of any tax levied pursuant to this section, so far as practicable.

History. Acts 1977, No. 178, §§ 3-5; use taxes for capital improvements, § 26-A.S.A. 1947, §§ 17-450 — 17-452. 74-201 et seq.

Cross References. County sales and Taxation generally, § 26-73-101.

14-20-113. Collection of delinquent taxes.

The quorum court in each county shall provide for the collection of delinquent taxes within the county and shall, by ordinance, place the responsibility therefor in the office of the county collector or the combined office of sheriff and collector, or may provide for the collection of delinquent taxes by a person designated by a board composed of the county judge, an appropriate representative of the public schools in the county, and the mayor of the county seat or of each county seat in the case of those counties having two (2) county seats.

History. Acts 1977, No. 495, § 1, A.S.A. 1947, § 17-401.1.

CASE NOTES

Purpose.

By the enactment of Ark. Const. Amend. 55, §§ 21-6-301 and 21-6-310, and this section, there was no intent to abolish the

office of delinquent tax collector; rather only an intent to abolish the fee compensation system. *Bahil v. Scribner*, 265 Ark. 834, 581 S.W.2d 334 (1979).

14-20-114. Extension of levies on tax books.

The taxes levied for county purposes named and specified shall be extended upon the tax books under the general head of county expenses, and warrants drawn by the clerk shall specify the fund or appropriation upon which they are drawn, respectively, and shall be made payable to the person in whose favor the allowance was made, or to the bearer. When so lawfully drawn and issued, the warrants shall be receivable by the sheriff and collector of revenue of the county for all licenses or debts due to the county.

History. Acts 1879, No. 77, § 10, p. 109; C. & M. Dig., § 1987; Pope's Dig., § 2532; A.S.A. 1947, § 17-413. shall be so construed as to enlarge the functions or powers of the County Court of Sebastian County as under existing laws.

Publisher's Notes. Acts 1879, No. 77, § 14, provided that nothing in the act

CASE NOTES**Warrants.**

Warrants issued should state on their face the purpose for which issued. *Lake v. Tatum*, 175 Ark. 90, 1 S.W.2d 554 (1927).

14-20-115. [Repealed.]

Publisher's Notes. This section, concerning fund for costs of court personnel and equipment in counties of 65,000 or more, was repealed by Acts 1995, No. 1256, § 20, as amended by Acts 1995 (1st Ex. Sess.), No. 13, § 4. The section was derived from Acts 1988 (3rd Ex. Sess.), No. 33, § 1; 1991, No. 786, § 11.

14-20-116. Youth accident prevention program.

(a) The quorum courts of the counties of Arkansas are hereby authorized by ordinance to establish a Youth Accident Prevention Program designed to educate junior and senior high school students about driving while intoxicated, seat belt safety, and injuries resulting from drinking and driving and not being belted. These programs may be conducted up to four (4) days in length, and the cost of salaries, equipment, supplies, and other items related to the operation of the program shall be paid by the county.

(b) The municipal courts of Arkansas are hereby authorized to allocate up to five dollars (\$5.00) of every fine, penalty, and forfeiture imposed and collected from every person convicted of a moving traffic offense for any Youth Accident Prevention Education Program created under subsection (a) of this section, and the same allocation shall pertain to any bond which is forfeited for any such offenses. These funds are to be remitted to the county treasurer and deposited into a special fund. Funds may be expended from this fund only for the purposes of this section.

History. Acts 1993, No. 594, §§ 1, 2.

Cross References. Municipal courts generally, § 16-17-101 et seq.

CHAPTER 21

COUNTY FUNDS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. COUNTY DRUG ENFORCEMENT FUND.

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp. & Coun., § 637 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 14-21-101. Comprehensive financial management system.
- 14-21-102. Annual financial report.
- 14-21-103. [Repealed.]
- 14-21-104. County funds in State Treasury.
- 14-21-105. Funds in closed banks.

SECTION.

- 14-21-106. Surplus funds.
- 14-21-107. Transfer of unexpended balances in bond redemption funds.
- 14-21-108. Photographic images of checks.

Cross References. Clerks of courts to pay money to county treasurers, § 16-20-106.

Depositories for public funds, § 19-8-101 et seq.

Effective Dates. Acts 1883, No. 37, § 3: effective on passage.

Acts 1883, No. 107, § 3: effective on passage.

Acts 1929, No. 210, § 2: approved Mar. 27, 1929. Emergency clause provided: "This act being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared and this act shall be in full force and effect from and after its passage."

Acts 1931, No. 201, § 2: approved Mar. 26, 1931. Emergency clause provided: "It is hereby found and ascertained that there are public funds on deposit in closed banks in this State and that it is imperative that said banks be re-opened that the

public may have the benefit of said funds; that an emergency is hereby found and declared to exist, and this act should be in full force and effect from and after its passage."

Acts 1943, No. 60, § 2: effective on passage.

Acts 1977, No. 276, § 3: Feb. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that in some cases when Amendment 49 bonds have been wholly retired, unexpended balances remain in the bond redemption fund; and that these funds could be put to effective use by the county, city or town that initially issued the bond. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-21-101. Comprehensive financial management system.

(a)(1) In order to provide necessary financial information for the county judge, the members and committees of the county quorum court, and other interested officers and departments of the county, the Legislative Auditor is authorized and directed to develop a comprehensive financial management system for appropriate funds of the various counties in the State of Arkansas.

(2) This financial management system shall provide for adequate controls over revenues, expenditures, and balances to assure that current information will always be available concerning the financial condition of the county and its various offices and departments.

(3) The system shall include a budgeting and accounting system designed to classify the receipt of and the appropriations and disbursements of county funds in accordance with the object and purpose of the expenditures in such detail as will be suitable for an analysis of the operations of all county offices and departments and which will provide a breakdown and itemization of all expenditures compatible with and comparable to the appropriations of the quorum court.

(b) In the event any county is of the opinion that its system of budgeting and accounting for appropriated county funds is such that it equals or exceeds the basic system prescribed by this section, such county, acting through the quorum court, may request a review of its system by the Legislative Joint Auditing Committee. If the committee concurs with the county, the committee may issue a certificate to the county stating that the county's budgeting and accounting system is of such degree of sophistication that the basic requirements of this section are being met and exempting the county from the requirements of the particulars of the system prescribed by this section.

History. Acts 1981, No. 122, § 1; A.S.A. 1947, § 17-609.

Publisher's Notes. The former last two sentences of subdivision (a)(3) of this section provided that the Legislative Auditor should develop the system and prepare a manual for implementing it, to be

supplied to all counties, on or before October 1, 1981, and that the system developed by the auditor should be implemented by the counties before January 1, 1983.

Cross References. Division of Legislative Audit, § 10-4-101 et seq.

14-21-102. Annual financial report.

(a)(1) The clerk of the county court shall make out or cause to be made out a full and complete annual financial report of the county, using the financial records of the county clerk and county treasurer, giving:

- (A) A beginning cash balance;
- (B) The amount of revenue from each source classification;
- (C) The amount expended during the fiscal year for all purposes;
- and
- (D) An ending cash balance.

(2) The annual county financial report shall include all operating accounts of the county for which the quorum court has appropriating control.

(3) The annual county financial report shall include a statement of the bonded indebtedness of the county.

(b)(1) The clerk of the county court shall cause to be published one (1) time in one (1) newspaper published in the county the annual financial report of the county. The report shall be published between January 15 and February 15 of each year for the previous fiscal year of the county.

(2) If no newspaper is published in such county, then the financial report is to be published in a newspaper having the largest circulation in the county.

History. Acts 1993, No. 538, §§ 2, 3; 1995, No. 232, § 4.

Publisher's Notes. Former § 14-21-102, concerning semiannual financial statement, was repealed by Acts 1993, No.

538, § 1. The former section was derived from Acts 1967, No. 314, § 1; 1981, No. 677, § 1; A.S.A. 1947, § 17-710.

Amendments. The 1995 amendment inserted "bonded" in (a)(3).

14-21-103. [Repealed.]

Publisher's Notes. This section, concerning the county salary fund, was repealed by Acts 1995, No. 232, § 11. The

section was derived from Acts 1967, No. 184, § 1; 1975, No. 370, § 1; A.S.A. 1947, §§ 17-606, 17-608.

14-21-104. County funds in State Treasury.

(a)(1) Whenever there is any money or funds of any kind, from whatever source derived, in the State Treasury belonging to any county, the county court of the county shall make an order authorizing and directing the county treasurer to draw them.

(2) Upon the county treasurer presenting to the State Auditor a copy of the order, duly certified to by the clerk of the county court, under his official seal, the auditor shall draw his warrant upon the State Treasurer for whatever money or funds there may at the time be in the State Treasury belonging to the county. Then the county treasurer shall execute to the auditor a receipt for the warrant. Upon the presentation of the warrant of the auditor, the State Treasurer shall pay it.

(b) Upon the receipt of any such funds or money by the county treasurer of any county, he shall receipt therefor in duplicate, one (1) of which shall be retained by the State Treasurer and the other shall be filed in the office of the clerk of the county, and the county treasurer shall thereupon charge himself with the funds or money so received by him as county treasurer.

History. Acts 1883, No. 37, §§ 1, 2, p. 59; 1883, No. 107, § 1, p. 191; C. & M.

Dig., §§ 1925-1928; Pope's Dig., §§ 2441-2444; A.S.A. 1947, §§ 17-601, 17-602.

14-21-105. Funds in closed banks.

(a) Where various funds of counties are on deposit in a closed bank and the bank could be reopened by agreements for deferred payments of deposits, the county court of any county in which any closed bank is situated is authorized, by proper order of the county court, to consent to deferred payments of deposits of all public funds in the closed bank upon such terms as may be fixed by the order of the court.

(b) This section shall apply to all county general, roads, school, and all other funds which are handled by county treasurers.

History. Acts 1931, No. 201, § 1;
Pope's Dig., § 2624; A.S.A. 1947, § 17-604.

14-21-106. Surplus funds.

When any surplus is left remaining unexpended and unappropriated in the county general fund, the county road fund, the school fund, or any other special fund provided by law from any previous year, the county court of any such county is authorized, by proper order made and entered, to transfer and add the surplus to the respective funds of which the surplus remains unexpended and use it as the revenues for the current fiscal year into which it is transferred and added if all outstanding indebtedness for the fiscal years in which the surplus accrued has been paid.

History. Acts 1929, No. 210, § 1;
Pope's Dig., § 2623; A.S.A. 1947, § 17-603.

CASE NOTES

Cited: *Western Sur. Co. v. Washington County*, 244 Ark. 1227, 429 S.W.2d 99 (1968).

14-21-107. Transfer of unexpended balances in bond redemption funds.

(a) In all cases where bonds have been issued by any county for the construction, reconstruction, and extension of any county courthouse or county jail, as authorized by Arkansas Constitution, Amendment 17 [repealed], and all bonds issued for these purposes by any county have been wholly retired, the county courts of the counties, by appropriate order, may transfer any balances remaining unexpended to the credit of the bond redemption fund in the counties, to the county general revenue fund, and they may then be used for all purposes for which the county general revenue fund could be used.

(b) In all cases where Amendment 49 [repealed] bonds have been issued by any county, as authorized by Arkansas Constitution, Amendment 49, and all bonds issued for these purposes by the county have

been wholly retired, the county court, by appropriate order, may transfer any balances remaining unexpended in the bond redemption fund to the county general revenue fund, and when so transferred, the funds may be used for any and all purposes for which other funds in the general revenue fund of the county may be used.

History. Acts 1943, No. 60, § 1; 1973, No. 51, § 1; 1977, No. 276, § 1; A.S.A. 1947, §§ 17-605, 17-607.

A.C.R.C. Notes. Arkansas Const. Amend. 62, § 11, provides that all provisions of the Arkansas Constitution, or

amendments thereto, in conflict with Ark. Const. Amend. 62, including Ark. Const. Amends. 17 and 49, are repealed.

Publisher's Notes. Acts 1973, No. 51, § 1, is also codified as § 14-58-102.

14-21-108. Photographic images of checks.

A financial institution may provide to its county government customer, in lieu of the original checks, photographic images of checks on its financial statements. These images may be provided on paper or, upon obtaining the written agreement of the county treasurer, on magnetic or optical media. The photographic images of checks furnished must show both the front and back images of the checks and must be copied on paper that is watermarked or otherwise copy protected or copied on magnetic or optical media in such a format as to prevent tampering.

History. Acts 1997, No. 121, § 1.

Cross References. Original of supporting papers to be retained by the agency, § 19-4-815.

Retention of documents, § 19-4-1108.

Admissibility of copy of record, § 14-2-202.

Payment by check, § 14-24-201 et seq.
County Accounting Law, § 14-25-101 et seq.

SUBCHAPTER 2 — COUNTY DRUG ENFORCEMENT FUND

SECTION.

14-21-201. Establishment of drug enforcement fund.

14-21-202. Restrictions on use of funds.

SECTION.

14-21-203. Approval of claims by county judge.

14-21-204. Accounting records.

14-21-201. Establishment of drug enforcement fund.

(a) **ORDINANCE.** Each quorum court may by ordinance establish a drug enforcement fund. The ordinance shall set a maximum amount for the fund, not to exceed ten thousand dollars (\$10,000). The drug enforcement fund shall be administered by the county sheriff in accordance with the provisions and procedures of this subchapter. All funds shall initially be deposited in a drug enforcement fund bank account. The bank account shall be established at a bank located in the State of Arkansas and authorized by law to receive the deposit of public funds.

(b) **SOURCE OF FUNDS.** The source of all funds deposited in the drug enforcement fund shall be funds appropriated by the quorum court. The initial funding and any subsequent reimbursements to the drug enforcement fund shall be appropriated by the quorum court and subject

to the normal disbursement procedures required by law. No funds from other sources, including seized property, shall be deposited into the drug enforcement fund.

History. Acts 1997, No. 362, § 1.

14-21-202. Restrictions on use of funds.

(a) Drug enforcement funds may only be used for direct expenses associated with the investigation of the criminal drug laws of this state, such as, but not limited to, the purchase of evidence, payment of informants, relocation and/or security of witnesses, emergency supply purchases, and emergency travel expenses.

(b) Drug enforcement funds may not be used for equipment purchases or leasing, salaries or wages, professional services, training, or any other purpose not directly related to a criminal drug investigation. In addition, these funds may not be used for administrative costs associated with the sheriff's office.

History. Acts 1997, No. 362, § 2.

14-21-203. Approval of claims by county judge.

(a) After a quorum court has approved a proper ordinance establishing a drug enforcement fund, set the maximum amount of the fund, and appropriated funds for the fund, the county judge may approve a county claim for the initial establishment of the drug enforcement fund.

(b) If adequate appropriations and funds are available, the drug enforcement fund may be replenished upon presentation and approval of a claim as provided in the normal county disbursement procedures. The total amount of funds held in the drug enforcement fund bank account and cash funds held by the sheriff's office shall not exceed the maximum amount established by the quorum court.

History. Acts 1997, No. 362, § 3.

14-21-204. Accounting records.

Accounting records shall be maintained by the sheriff's office for the receipt, disbursement, accounting, and documentation of funds according to the written procedures established by the Division of Legislative Audit.

History. Acts 1997, No. 362, § 4.

CHAPTER 22

COUNTY PURCHASING PROCEDURES

SECTION.

14-22-101. Definitions.

14-22-102. Applicability.

SECTION.

14-22-103. Penalty.

14-22-104. Purchases permitted.

SECTION.

- 14-22-105. Purchase of motor fuels and accessories.
- 14-22-106. Purchases exempted from soliciting bids.
- 14-22-107. List of eligible bidders.
- 14-22-108. Bidding procedure.
- 14-22-109. Descriptions and specifications.

SECTION.

- 14-22-110. Testing and examination of products.
- 14-22-111. Awarding of contracts.
- 14-22-112. Order of approval.
- 14-22-113. Trade-ins.
- 14-22-114. Failure of performance.
- 14-22-115. Legal counsel.

Cross References. Governmental Compliance Act, § 10-4-301 et seq.

Effective Dates. Acts 1975, No. 439, § 7: Mar. 17, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the efficient operation of the affairs of county government necessitates the establishment of realistic and reasonable purchasing procedures, and that the immediate passage of this Act is necessary to make immediate changes and improvements in the existing laws governing county purchasing procedures, thereby promoting efficiency in the operation of county government. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 617, § 7: Mar. 28, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the efficient operation of the affairs of county government necessitates the establishment of realistic and reasonable purchasing procedures, and that the immediate passage of this Act is necessary to make immediate changes and improvements in the existing laws governing county purchasing procedures, thereby promoting efficiency in the operation of county government. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 306, § 3: Mar. 4, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is impractical and contrary to the best interests of the citizens of this State that advanced emergency medical services provided by a private nonprofit corporation to counties be covered by the County Purchasing Law and that this Act is immediately necessary to provide such exemption. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 745, § 4: Aug. 1, 1985.

Acts 1989, No. 879, § 4: Mar. 22, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law requires counties to purchase by competitive bids used pipes if the purchase would be in excess of five thousand dollars (\$5,000.) that the opportunity now exists for counties to purchase such materials at a substantially lower price than they could purchase it if they are required to take bids due to the fact that the used pipe will not be available but for a short period of time; and that this Act should therefore be given immediate effect. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Waiver of competitive bidding requirements for state and local public

building and construction contracts. 40 ALR 4th 968.

Amount of appropriation as limitation on damages for breach of contract recoverable by one contracting with government agency. 40 ALR 4th 998.

Public contracts: low bidder's monetary relief against state or local agency for nonaward of contract. 65 ALR 4th 93.

Validity, construction, and effect of state and local laws requiring governmental

units to give "purchase preference" to goods manufactured or services performed in state. 84 ALR 4th 419.

Validity, construction, and effect of requirement under state statute or local ordinance giving local or locally qualified contractors a percentage preference in determining lowest bid. 89 ALR 4th 587.

CASE NOTES

Purpose.

Purpose of this chapter is to regulate purchasing procedures. *Mackey v. State*, 257 Ark. 497, 519 S.W.2d 760 (1975).

14-22-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Purchasing official" means any county official, individual, board, or commission, or his or its lawfully designated agent, with constitutional authority to contract or make purchases in behalf of the county;

(2) "Commodities" means all supplies, goods, material, equipment, machinery, facilities, personal property, and services other than personal services, purchased for or on behalf of the county;

(3) "Purchase price" means the full sale or bid price of any commodity, without any allowance for trade-in;

(4) "Purchase" means not only the outright purchase of a commodity, but also the acquisition of commodities under rental-purchase agreements or lease-purchase agreements or any other types of agreements whereby the county has an option to buy the commodity and to apply the rental payments on the purchase price thereof;

(5) "Formal bidding" shall mean the procedure to be followed in the solicitation and receipt of sealed bids, wherein:

(A) Notice shall be given of the date, time, and place of opening of bids, and the names or a brief description and the specifications of the commodities for which bids are to be received, by one (1) insertion in a newspaper with a general circulation in the county, not less than ten (10) days nor more than thirty (30) days prior to the date fixed for opening such bids;

(B) Not less than ten (10) days in advance of the date fixed for opening the bids, notices and bid forms shall be furnished to all eligible bidders on the bid list for the class of commodities on which bids are to be received, and to all others requesting them; and

(C) At least ten (10) days in advance of the date fixed for opening bids, a copy of the notice of invitation to bid shall be posted in a conspicuous place in the county courthouse;

(6) "Open market purchases" means those purchases of commodities by any purchasing official in which competitive bidding is not required;

(7) "Trade-in purchases" means all purchases where offers must be included with the bids of each bidder for trade-in allowance for used commodities;

(8) "Used or secondhand motor vehicles, equipment, or machinery" means any motor vehicles, equipment, or machinery having had at least five hundred (500) working hours' prior use or eighteen thousand (18,000) miles' prior use. Any purchase of used motor vehicles, equipment, or machinery shall be accompanied by a statement in writing from the vendor that the motor vehicle, equipment, or machinery has been used a minimum of five hundred (500) hours or driven a minimum of eighteen thousand (18,000) miles. This statement shall be filed with the county clerk at the time of purchase.

History. Acts 1965 (1st Ex. Sess.), No. § 2; 1985, No. 844, § 1; A.S.A. 1947, § 17-52, § 2; 1975, No. 439, § 2; 1975, No. 617, 1602.

CASE NOTES

Formal Bidding.

Purchase of voting machines without complying with subdivision (5) was invalid even though it was known that there

were only two eligible bidders, who were notified and invited to submit bids and did submit bids. *Davis v. Jerry*, 245 Ark. 500, 432 S.W.2d 831 (1968).

14-22-102. Applicability.

(a) It is unlawful for any county official to make any purchases with county funds in excess of ten thousand dollars (\$10,000) unless the method of purchasing prescribed in this chapter is followed.

(b) This chapter shall not apply to any purchases under ten thousand dollars (\$10,000) or to the purchase of commodities set forth in § 14-22-106.

History. Acts 1965 (1st Ex. Sess.), No. 52, § 1; 1975, No. 439, § 1; 1975, No. 617, § 1; 1985, No. 745, § 1; A.S.A. 1947, § 17-1601; Acts 1995, No. 431, § 1.

substituted "ten thousand dollars (\$10,000)" for "five thousand dollars (\$5,000)" in (a) and (b); and inserted "to the" preceding "purchase" in (b).

Amendments. The 1995 amendment

CASE NOTES

Cited: *Dean Leasing, Inc. v. Van Buren County*, 27 Ark. App. 134, 767 S.W.2d 316 (1989).

14-22-103. Penalty.

Any person or official who intentionally violates the provisions of this chapter shall, upon conviction, be fined in any amount not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000). In addition thereto, he may be removed from his office or position of employment with the county.

History. Acts 1965 (1st Ex. Sess.), No. 52, § 13; A.S.A. 1947, § 17-1613.

14-22-104. Purchases permitted.

All purchases of commodities made by any county purchasing official with county funds, except those specifically exempted by this chapter, shall be made as follows:

(1) Formal bidding shall be required in each instance in which the estimated purchase price shall equal or exceed ten thousand dollars (\$10,000);

(2) Open market purchases may be made of any commodities where the purchase price is less than ten thousand dollars (\$10,000); and

(3) No purchasing official shall parcel or split any items of commodities or estimates with the intent or purpose to change the classification or to enable the purchase to be made under a less restrictive procedure.

History. Acts 1965 (1st Ex. Sess.), No. 52, § 3; 1975, No. 439, § 3; 1975, No. 617, § 3; 1985, No. 745, § 2; A.S.A. 1947, § 17-1603; Acts 1995, No. 431, § 2.

Amendments. The 1995 amendment substituted "ten thousand dollars (\$10,000)" for "five thousand dollars (\$5,000)" in (1) and (2).

CASE NOTES

ANALYSIS

Purpose.
Formal bidding.
Parcel or split.
Purchases.

Purpose.

Purpose of this section is to regulate purchasing procedures. *Mackey v. State*, 257 Ark. 497, 519 S.W.2d 760 (1975).

Formal Bidding.

The purchase of sixty voting machines at a cost far in excess of the statutory amount required formal bidding under subdivision (1). *Davis v. Jerry*, 245 Ark. 500, 432 S.W.2d 831 (1968).

Parcel or Split.

Mere suspicion was not enough to prove that defendant intentionally violated the

prohibition against splitting purchases to avoid the necessity of soliciting competitive bids where the evidence showed only that materials of the same kind were purchased on successive days for amounts under the statutory requirements. *Mackey v. State*, 257 Ark. 497, 519 S.W.2d 760 (1975).

Purchases.

Approval by county judge of purchases already made by others does not amount to purchases by the judge, and therefore a judge does not violate the purchasing restrictions, where no conspiracy between the judge and those making the purchases is proved. *Mackey v. State*, 257 Ark. 497, 519 S.W.2d 760 (1975).

Cited: *Dean Leasing, Inc. v. Van Buren County*, 27 Ark. App. 134, 767 S.W.2d 316 (1989).

14-22-105. Purchase of motor fuels and accessories.

For the purpose of this chapter, any county within this state may be considered a state agency for the purpose of purchasing gasoline, oil, and other motor fuels, and batteries, tires, and tubes for motor vehicles. Any county purchasing agent within this state may, by complying with Acts 1955, No. 313, §§ 13, 14 [repealed], purchase such commodities through the state purchasing agent under the authority set forth in these statutes.

History. Acts 1965 (1st Ex. Sess.), No. 52, § 11; A.S.A. 1947, § 17-1611. state purchasing, see § 19-11-201 et seq. (Arkansas Purchasing Law).

Publisher's Notes. For present law on

14-22-106. Purchases exempted from soliciting bids.

The following listed commodities may be purchased without soliciting bids:

- (1) Perishable foodstuffs for immediate use;
- (2) Unprocessed feed for livestock and poultry;
- (3) Advanced emergency medical services provided by a nonprofit corporation and proprietary medicines when specifically requested by a professional employee;
- (4) Books, manuals, periodicals, films, and copyrighted educational aids for use in libraries and other informational material for institutional purposes;
- (5) Scientific equipment and parts therefor;
- (6) Replacement parts and labor for repairs of machinery and equipment;
- (7) Commodities available only from the federal government;
- (8) Any commodities needed in instances in which an unforeseen and unavoidable emergency has arisen in which human life, health, or public property is in jeopardy. However, no such emergency purchase shall be approved unless a statement in writing shall be attached to the purchase order describing the emergency necessitating the purchase of such commodity without competitive bidding;
- (9) Utility services the rates for which are subject to regulation by a state agency or a federal regulatory agency;
- (10) Sand, gravel, soil, lumber, or used pipe;
- (11) Used or secondhand motor vehicles, machinery, or equipment, except that a used or secondhand motor vehicle which has been under lease to a county when the vehicle had fewer than eighteen thousand (18,000) miles of use may not be purchased by the county when it has been used eighteen thousand (18,000) miles or more except upon competitive bids as provided for in this chapter;
- (12) Machinery, equipment, facilities, or other personal property purchased or acquired for, or in connection with, the securing and developing of industry under or pursuant to the provisions of Arkansas Constitution, Amendment 49 [repealed], of § 14-164-201 et seq., or of any other provision of law pertaining to the securing and developing of industry;
- (13) Registered livestock to be used for breeding purposes;
- (14) Motor fuels;
- (15) Motor vehicles, equipment, machinery, material, or supplies offered for sale at public auction or through a process requiring sealed bids; and
- (16) All goods and services which are regularly provided to state agencies and county government by the Arkansas Department of Correction's various penal industries.

History. Acts 1965 (1st Ex. Sess.), No. 52, § 6; 1975, No. 439, §§ 5, 6; 1975, No. 617, §§ 5, 6; 1981, No. 306, § 1; 1985, No. 844, §§ 2, 3; A.S.A. 1947, § 17-1606; Acts 1989, No. 879, § 1; 1991, No. 786, § 12; 1993, No. 237, § 1.

A.C.R.C. Notes. Arkansas Const. Amend. 62, § 11, provides that all provisions of the Arkansas Constitution, or amendments thereto, in conflict with Ark. Const. Amend. 62, including Ark. Const. Amends. 17 and 49, are repealed.

Acts 1991, No. 786, § 37, provided: "The enactment and adoption of this Act shall not repeal, expressly or impliedly, the acts

passed at the regular session of the 78th General Assembly. All such acts shall have full effect and, so far as those acts intentionally vary from or conflict with any provision contained in this Act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987."

Amendments. The 1993 amendment, in (9), deleted the comma between "services" and "the rates"; in (11), deleted the comma between "miles of use" and "may not"; in (12), substituted "of" for "Arkansas Code"; and added (16).

CASE NOTES

ANALYSIS

Attached statement.
Nonexempt purchases.

Attached Statement.

The purpose of the statement requirement in subdivision (8) is likely to assure that the exemption only applies to equipment that is truly used equipment. *Robinson v. Clark Contracting Co.*, 992 F.2d 154 (8th Cir. 1993).

Where a party did not timely file a subdivision (8) statement, the party's substantial compliance as to the time of filing allowed the exemption in subdivision (11) to be applicable. *Robinson v. Clark Contracting Co.*, 992 F.2d 154 (8th Cir. 1993).

Nonexempt Purchases.

The purchase of voting machines is not within the exceptions enumerated in this section. *Davis v. Jerry*, 245 Ark. 500, 432 S.W.2d 831 (1968).

14-22-107. List of eligible bidders.

(a) The county purchasing official shall establish and maintain a list of eligible bidders covering all commodities and shall furnish copies of it to all purchasing officials of the county.

(b) Any firm which desires to bid and have its name on the list of prospective bidders shall notify the purchasing official in writing of this desire, setting forth the class and description of commodities on which it desires to bid and the firm's qualifications as a responsible bidder.

(c) Every effort shall be made by the purchasing official to notify all eligible bidders before purchases are made.

History. Acts 1965 (1st Ex. Sess.), No. 52, § 7; A.S.A. 1947, § 17-1607.

14-22-108. Bidding procedure.

(a) All bids which require either formal or informal bidding shall be opened in public and read at the time and place specified in the notice.

(b) The awarding of contracts need not be upon the day of the opening of the bids but may be at a later date to be determined by the purchasing official.

(c) In order to assure that the bidder will accept and perform a contract under the terms of his bid, the purchasing official may require

bids to be accompanied by certified check or surety bond furnished by a surety company authorized to do business in this state in such a reasonable amount as the purchasing official shall determine.

History. Acts 1965 (1st Ex. Sess.), No. 52, § 8; A.S.A. 1947, § 17-1608.

14-22-109. Descriptions and specifications.

(a) Descriptions and specifications shall be sufficiently restricted or specific so as to exclude cheap or inferior commodities which are not suitable or practicable for the purpose for which they are to be used, but at no time shall they be so specific in detail as to restrict or eliminate competitive bidding of any items of comparable quality and coming within a reasonably close price range.

(b) Brand names may be used to simplify or indicate the general description of the commodities required, but at no time, except for repair parts or items for use with existing equipment and machines or other health aids requested by a professional employee, shall such names be used to indicate any preference or to prevent bidding on commodities of like quality and coming within reasonably close price range.

History. Acts 1965 (1st Ex. Sess.), No. 52, § 4; 1975, No. 439, § 4; 1975, No. 617, § 4; A.S.A. 1947, § 17-1604.

14-22-110. Testing and examination of products.

(a) The purchasing official is authorized to establish and enforce standards for all commodities for which formal bidding is required and to make or cause to be made any test, examination, or analysis necessary therefor. He may require samples to be submitted and a certified analysis to accompany bids prior to awarding contracts.

(b) After the bids have been opened, the lowest responsible bidder may be required to submit his product or article to further testing and examination prior to awarding the contract.

History. Acts 1965 (1st Ex. Sess.), No. 52, § 4; 1975, No. 439, § 4; 1975, No. 617, § 4; A.S.A. 1947, § 17-1604.

14-22-111. Awarding of contracts.

(a) All contracts shall be awarded to the lowest responsible bidder, taking into consideration all relevant facts, including, without limitation, quality, time of performance, probability of performance, and location.

(b)(1) Any bid may be rejected by the purchasing official.

(2)(A) Where bids are rejected, but the proposed purchase is not abandoned, and the circumstances indicate that further solicitation

for bids would be to the best interest of the county, new bids may be called for.

(B) If the low bid is not accepted, a written statement shall be made by the purchasing agent and filed with the county clerk giving reasons for such refusal.

(c) All bidders shall be given equal consideration under the provisions of this chapter, except that when the bid represents items manufactured or grown in the county or offered for sale by business establishments having their principal place of business in the county with the quality being equal to articles offered by competitors outside the county, then the bidder shall be allowed a differential of not to exceed three percent (3%) of the purchase price in determining the low bid. However, in each instance in which this bid preference is requested, the bidder must so indicate before the date and time fixed for opening the bids and thereafter furnish satisfactory proof if requested.

(d) In all cases where there are equal or tie bids, preference shall be given to residents or firms located and doing business in the county.

History. Acts 1965 (1st Ex. Sess.), No. 52, § 5; A.S.A. 1947, § 17-1605.

CASE NOTES

Cited: Massongill v. County of Scott, 329 Ark. 98, — S.W.2d — (1997).

14-22-112. Order of approval.

(a) No contract shall be awarded or any purchase made until it has been approved by the county court, and no contract shall be binding on any county until the court shall have issued its order of approval.

(b) The order of the court shall be properly docketed. All documents and bids pertaining to the solicitation of bids and awarding of contracts under the purchasing procedure of this chapter shall be filed with the county clerk, together with the order of the court, which shall be filed by the clerk.

(c) No claim filed with the county for payment of any commodity, the purchase of which is regulated by this chapter, shall be paid; or no warrant shall be issued by the county clerk for the payment of it until the order of the court approving it shall have been issued and filed with the clerk.

History. Acts 1965 (1st Ex. Sess.), No. 52, § 9; A.S.A. 1947, § 17-1609.

CASE NOTES

Cited: Dean Leasing, Inc. v. Van Buren County, 27 Ark. App. 134, 767 S.W.2d 316 (1989).

14-22-113. Trade-ins.

(a) In the case of a purchase contract in which trade-ins are being offered on the purchase of commodities, the full purchase price shall govern the classification or purchase procedure to be followed in the solicitation for bids and the awarding of the contract.

(b) The purchasing official shall determine, with respect to trade-ins, what procedure shall be for the best interest of the county. If he so determines, such equipment or machinery may be sold outright under the law as provided.

History. Acts 1965 (1st Ex. Sess.), No. 52, § 10; A.S.A. 1947, § 17-1610.

14-22-114. Failure of performance.

If any bidder to whom a purchase contract is awarded under the provisions of this chapter shall refuse or fail to perform the contract or to make delivery when required by the contract, or shall deliver commodities which are inferior or do not meet the specifications under the bid, the county may pursue any remedy available at law or in equity, including, without limitation, the voiding of the contract.

History. Acts 1965 (1st Ex. Sess.), No. 52, § 10; A.S.A. 1947, § 17-1610.

14-22-115. Legal counsel.

The purchasing official, upon approval of the county court, may call upon the prosecuting attorney of the district in which the county lies, or employ counsel for advice and aid in the preparation of necessary contracts and all other legal matters in connection with those purchases.

History. Acts 1965 (1st Ex. Sess.), No. 52, § 12; A.S.A. 1947, § 17-1612.

CHAPTER 23**CLAIMS AGAINST COUNTIES****SUBCHAPTER**

1. GENERAL PROVISIONS.
2. PRESENTMENT TO COUNTY COURT.

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

- 14-23-101. Presentment to county court
— Appeals.
- 14-23-102. Itemized account required.
- 14-23-103. Examination of parties and documents.

SECTION.

- 14-23-104. Court order for payment.
- 14-23-105. Supporting documentation.
- 14-23-106. Allowance of more than
amount due unlawful.
- 14-23-107. Enforcing provisions against

SECTION.

allowances in excess of
revenues.

14-23-108. Unauthorized or constructive
fees prohibited.

SECTION.

14-23-109. Time limit on payment of al-
lowed claims.

Cross References. Indemnification by
state for certain actions, § 21-9-304.

Immunity from tort liability, § 21-9-301
et seq.

Trees destroyed by State Plant Board,
§ 2-16-101.

Workers' compensation, § 14-26-101 et
seq.

Effective Dates. Acts 1873, No. 31,
§ 30: effective on passage.

Acts 1873, No. 114, § 10: effective on
passage.

Acts 1879, No. 16, § 4: effective on pas-
sage.

Acts 1881, No. 65, § 2: effective on pas-
sage.

Acts 1895, No. 135, § 3: effective 90
days after passage.

Acts 1937, No. 193, § 4: approved Mar.
3, 1937. Emergency clause provided: "Al-
though the people of this State adopted
Amendment No. 10 to the Constitution of
the State of Arkansas for 1874, and al-
though its provisions are adequate if prop-
erly enforced, the same have not been
enforced and has thereby brought about a
condition of laxity on the part of our
county officials relative to expending more
funds than received during each fiscal
year; therefore, an emergency is hereby
declared to exist and this act shall be in
full force and effect from and after its
passage."

Acts 1939, No. 299, § 6: approved Mar.
14, 1939. Emergency clause provided: "It
being found by the General Assembly that
there are many counties in this state
where the officers in good faith have al-

lowed claims for highway purposes to ac-
cumulate prior to January 1, 1939, and
with the intention of paying the same
from Turnback funds due such counties
prior to the decision of the Supreme Court
of Arkansas construing Act 193 of the Acts
of 1937; and it being further found that
there are many citizens of the state who in
good faith hold claims against many coun-
ties for highway purposes that should be
paid, but cannot now be paid under the
present law; and it being further found
that the fiscal affairs of many counties of
this state are in a bad condition as a result
of the failure of some county officers to
comply strictly with the provisions of
Amendment No. 10; an emergency is
hereby declared to exist and this Act shall
take effect and be in force from and after
its passage."

Acts 1977, No. 756, § 4: Mar. 24, 1977.
Emergency clause provided: "It is hereby
found and determined by the General As-
sembly that there is currently no means of
approving claims made on the county
other than by certification; that this pro-
cess is time consuming, cumbersome, and
unnecessary to insure honesty in claims
presented to the county; that this Act
would make the payment of claims less
cumbersome and more efficient, resulting
in a saving of time and effort. Therefore,
an emergency is declared to exist, and this
Act being necessary for the immediate
preservation of the public peace, health
and safety shall be in full force and effect
from and after its passage and approval."

RESEARCH REFERENCES

ALR. Validity and construction of stat-
ute or ordinance limiting the kinds or
amount of actual damages recoverable in
tort action against governmental unit. 43
ALR 4th 19.

Right of one government subdivision to

sue another such subdivision for damages.
11 ALR 5th 630.

Am. Jur. 28 Am. Jur. 2d, Est. & Waiv.,
§ 127.

56 Am. Jur. 2d, Mun. Corp., §§ 680 et
seq., 848 et seq.

57 Am. Jur. 2d, Mun. & Coun. Tort., § 5 et seq.

Ark. L. Rev. State Immunity and the Arkansas Claims Commission, 21 Ark. L. Rev. 180.

Hall v. University of Nevada: Sovereign Immunity and the Transitory Action, 27 Ark. L. Rev. 546.

C.J.S. 20 C.J.S., Counties, § 297 et seq.

14-23-101. Presentment to county court — Appeals.

(a) All persons having demands against any county shall present them, duly verified according to law, to the county court of the county for allowance or rejection.

(b) From the order of the court thereon, appeals may be prosecuted as provided by law. If on any such appeal the judgment of the county court is reversed, the judgment of reversal shall be certified by the court rendering it to the county court, and the court shall thereupon enter the judgment of the superior court as its own.

History. Acts 1879, No. 16, § 2, p. 13; C. & M. Dig., §§ 2025, 2026; Pope's Dig., §§ 2579, 2580; A.S.A. 1947, § 17-702.

Cross References. Allowance to set forth appropriation from which to be paid, § 14-20-104.

Appeal from county allowances to circuit court — Bond, Ark. Const., Art. 7, § 51.

County judge to defend case on appeal — Costs, § 16-67-208.

CASE NOTES

ANALYSIS

Claims allowed.

Claims not allowed.

Jurisdiction.

Claims Allowed.

An allowance of interest on a judgment against a county is not a contract by a county to pay interest, and does not violate Ark. Const., Art. 16, § 1, prohibiting counties from lending credit. Nevada County v. Hicks, 50 Ark. 416, 8 S.W. 180 (1888).

County was liable for costs expended in procuring allowance, including fee for filing claim. Jefferson County v. Philpot, 66 Ark. 243, 50 S.W. 453 (1899).

Where construction of road was an accomplished fact, landowner's only remedy against county was to file a claim in the county court for just compensation for a completed taking, inasmuch as exclusive jurisdiction of a claim for compensation was vested in the county court as a matter relating to county roads, and the county could not be sued to recover this compensation by inverse condemnation proceed-

ings. Chamberlain v. Newton County, 266 Ark. 516, 587 S.W.2d 4 (1979).

Claims Not Allowed.

A county is not the subject of garnishment, but may be required in equity to pay the creditor of its insolvent creditor. Riffin v. Hilliard, 56 Ark. 476, 20 S.W. 402 (1892).

County was not liable for clerk's fee for filing accounts of claimants against county. Prairie County v. Vaughan, 64 Ark. 203, 41 S.W. 420 (1897).

County was not liable to refund purchase money of tax land. Nevada County v. Dickey, 68 Ark. 160, 56 S.W. 779 (1900).

County was not liable for fee for filing warrants for allowance and reissuance. Duncan v. Scott County, 70 Ark. 607, 70 S.W. 314 (1902).

Jurisdiction.

This section does not prevent a citizen of another state from maintaining a suit against a county on its obligations or contracts in a federal court, when all other jurisdictional facts appear to give this jurisdiction. Chicot County v. Sherwood, 148 U.S. 529, 37 L. Ed. 546, 13 S. Ct. 695 (1893).

Cited: Pulaski County v. Reeve, 42 Ark. 54 (1883); Jones v. Capers, 231 Ark. 870, 333 S.W.2d 242 (1960); Deason v. Rogers, 247 Ark. 1061, 449 S.W.2d 410 (1970); Bigelow v. Union County, 287 Ark. 486, 701 S.W.2d 125 (1985).

14-23-102. Itemized account required.

In all cases, the county court shall require an itemized account of any claim presented to it for allowance, certified or sworn to as required by law, and, in addition, the court may require in all cases satisfactory evidence of the correctness of the account.

History. Acts 1873, No. 114, § 8, p. 277; C. & M. Dig., § 2030; Pope's Dig., § 2584; A.S.A. 1947, § 17-704.

CASE NOTES

ANALYSIS

In general.
Appeals.

In General.

On a claim against a county, it is error to allow charges that are not itemized. Desha County v. Jones, 51 Ark. 524, 11 S.W. 875 (1889); Clark County v. Callaway, 52 Ark. 361, 12 S.W. 756 (1890); St. Francis County v. Cummings, 55 Ark. 419, 18 S.W. 461 (1892).

Former statutes providing expense allowances for county officials were uncon-

stitutional as applied, since, in some cases, the officials received the expenses in advance and made no accounting therefor and, in other cases, the officials filed a claim each month, but without an itemized account. Tedford v. Mears, 258 Ark. 450, 526 S.W.2d 1 (1975).

Appeals.

Where no objection is raised in a trial court that a claim against a county was not itemized, the objection cannot be raised on appeal. Hempstead County v. Wilson, 144 Ark. 267, 222 S.W. 48 (1920).

14-23-103. Examination of parties and documents.

Each county court may, in the investigation of any account, examine all the parties and witnesses, on oath, touching the matter, or any other matter arising under this act and shall have power to compel the production of all books, accounts, papers, or documents which may be necessary in the investigation of any matter arising under the provisions of this act.

History. Rev. Stat., ch. 41, § 35; C. & M. Dig., § 2030; Pope's Dig., § 2584; A.S.A. 1947, § 17-705.

Meaning of "this act". Rev. Stat., ch. 41, codified as §§ 14-15-801, 14-15-805 — 14-15-807, 14-15-809, 14-23-103, 14-24-102 — 14-24-105, 14-24-110, 14-24-111, and 21-7-211.

14-23-104. Court order for payment.

No moneys appropriated by the county quorum court from a tax levied or from any other source shall be paid out of the county treasury, except on an order duly made by the county court, while in session, and entered upon the records of its proceedings.

History. Acts 1873, No. 31, § 11, p. 53; Acts 1977, No. 756, § 1; A.S.A. 1947, C. & M. Dig., § 2027; Pope's Dig., § 2581; § 17-701.

CASE NOTES

Payment.

Where circuit clerk and deputy sheriff rendered services for county in felony cases during 1937 and 1938 and the cases were disposed of in 1939, claims for such services accrued in 1939 and were allowable out of 1939 revenue, and not out of the revenue of previous years, and could

still be paid out of such revenue in 1940 if there was a sufficient surplus at the close of 1939. *Poinsett County v. Lady*, 199 Ark. 657, 135 S.W.2d 665 (1940).

Cited: *Rolfe v. Spybuck Drainage Dist.* No. 1, 101 Ark. 29, 140 S.W. 988 (1911); *Jones v. Capers*, 231 Ark. 870, 333 S.W.2d 242 (1960).

14-23-105. Supporting documentation.

(a)(1)(A) Before any account, claim, demand, or fee bill shall be allowed by any county court, the court shall require the person, or his legal representative, claiming it to be due, to attach to the county claim for payment an itemized listing or numbered invoice which may be designated as supporting documentation.

(B) The itemized listing or numbered invoice shall be made a part of the county claim for payment and shall be approved for payment by the appropriate county elected official, or his designated representative, prior to the claim being filed and docketed with the county clerk.

(2)(A) The allowed claim, demand, or fee bill, together with the itemized listing or numbered invoice for payment, shall be filed with the county clerk and kept in his office for the term of three (3) years, and these documents shall be subject to the inspection of any member of the grand jury of the county at each term of the grand jury or by the prosecuting attorney of the circuit court.

(B) Any claim which is a matter of record or any claim in the circuit court when it is duly certified down to the county court by the clerk of the circuit court shall be sufficient justification for the claim for the payment to be allowed.

(b) The county clerk shall preserve all claims and supporting documents for a period of seven (7) years after they have been audited by the Division of Legislative Audit and the audit report in regard thereto has been accepted and filed by the Legislative Joint Auditing Committee, at which time he may obtain a county court order to destroy them by shredding or other appropriate means.

History. Acts 1873, No. 31, § 12, p. 57; Pope's Dig., § 2583; Acts 1957, No. 162, 1875 (Adj. Sess.), No. 44, § 2, p. 51; 1881, § 1; 1977, No. 756, § 2; 1983, No. 727, No. 65, § 1, p. 130; C. & M. Dig., § 2029; § 1; A.S.A. 1947, § 17-703.

CASE NOTES

ANALYSIS

In general.
Applicability.
Certification.

Criminal violations.
Jurisdiction.

In General.

Where county court makes an order

directing the payment of a claim against the county, it is not necessary to comply with this section. *West Twelfth St. Rd. Imp. Dist. No. 30 v. Kinstley*, 188 Ark. 77, 63 S.W.2d 980 (1933).

The requirements of this section are not merely formal, but a substantial and substantive part of the law, and must be substantially followed either in the exact words of the statute or in words of equal import and meaning. *National Supply Co. v. Izard County*, 190 Ark. 744, 81 S.W.2d 842 (1935).

Applicability.

This section does not apply if there is a special statute directing the manner in which claims are to be presented. *Saline County v. Kinkead*, 84 Ark. 329, 105 S.W. 581 (1907).

Certification.

Objection that account was not verified could not be raised for first time on appeal. *Road Dist. No. 27 v. Spradley*, 151 Ark. 494, 236 S.W. 842 (1922) (decision prior to 1977 amendment).

County was held liable for construction of bridge even though affidavit was defective. *Woodruff County v. Road Imp. Dist. No. 14*, 165 Ark. 101, 262 S.W. 994 (1924) (decision prior to 1977 amendment).

Petition to restore lost record of claim against county and of the allowance thereof by the county court that alleged the filing of the claim, duly verified, and its allowance by the county court, but that the order was not placed on the court records and no warrant was issued and that the claim had been lost, stated a cause of action. *McDaniel v. Prairie County*, 187 Ark. 38, 58 S.W.2d 200 (1933) (decision prior to 1977 amendment).

Affidavit attached to claim against county alleging that account was true and correct, that no part of the account had been paid, and that it was due and payable was held not to comply with this section. *National Supply Co. v. Izard County*, 190 Ark. 744, 81 S.W.2d 842 (1935) (decision prior to 1977 amendment).

No affidavit as required in ordinary contractual claims against a county was required on claims by circuit clerk and deputy sheriff for services rendered in criminal cases. *Poinsett County v. Lady*, 199 Ark. 657, 135 S.W.2d 665 (1940) (decision prior to 1977 amendment).

A leasehold interest in realty was held to be a very real and tangible thing, and "services charged for or materials furnished" were actually furnished within meaning of this section when the lease contract was completed by formal ratification. *Watts & Sanders v. Myatt*, 216 Ark. 660, 226 S.W.2d 800 (1950) (decision prior to 1977 amendment).

Criminal Violations.

Before a conviction can be sustained on a charge of violating this section, there must be some showing of a willful violation of the statute inferring corrupt motives. *Gordon v. State*, 233 Ark. 256, 343 S.W.2d 780 (1961).

Jurisdiction.

This section does not take away the jurisdiction of a county court over claims against the county and does not prohibit the court from adjudicating the validity of a claim. *Lamb & Rhodes v. Howton*, 131 Ark. 211, 198 S.W. 521 (1917).

Cited: *Jones v. Capers*, 231 Ark. 870, 333 S.W.2d 242 (1960).

14-23-106. Allowance of more than amount due unlawful.

(a)(1) It shall be unlawful for any county court in this state to allow any greater sums for any account, claim, demand, or fee bill against the county than the amount actually due, estimating one dollar (\$1.00) in county warrants as at par with one dollar (\$1.00) in lawful money of the United States, dollar for dollar, according to the legal or ordinary and customary compensation for services rendered, materials furnished, and salaries or fees of officers, when they are paid in such lawful money.

(2) No county court shall direct the issue of any warrants, nor, if directed in violation of this act, shall any clerk issue any such warrant upon such accounts, claims, demands, or fee bills for more than the actual amount so allowed, which is one dollar (\$1.00) in lawful money

of the United States for one dollar (\$1.00) in county warrants, and no more.

(b) Any county court, or any judge of the county court, or clerk of the court who shall willfully violate any of the provisions of this act, or neglect or refuse to perform any duty imposed in this act, shall be deemed guilty of a misdemeanor and, upon conviction in a court of competent jurisdiction, shall be subject to a fine or not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000) and shall be removed from office.

History. Acts 1873, No. 31, §§ 11, 26, p. 57; 1875 (Adj. Sess.), No. 44, § 1, p. 51; C. & M. Dig., §§ 2028, 2815; Pope's Dig., §§ 2582, 3533; A.S.A. 1947, §§ 17-706, 17-707.

Meaning of "this act". Acts 1873, No.

31, codified as §§ 14-23-104 — 14-23-106, 14-24-101, 14-319-101, 16-15-106, 16-15-107, 16-15-110, 16-15-112, 16-20-401, 16-67-208, 27-87-102, 27-87-301, 27-87-302, 27-87-401.

CASE NOTES

ANALYSIS

In general.
Applicability.
Penalty.

In General.

A county court is prohibited from allowing any greater sum against the county than is actually due in money. *Goyne v. Ashley County*, 31 Ark. 552 (1876); *Barton v. Swepston*, 44 Ark. 437 (1884); *Chicot County v. Kruse*, 47 Ark. 80, 14 S.W. 469 (1885).

Applicability.

This section applies to bridge contracts. *Watkins v. Stough*, 103 Ark. 468, 147 S.W. 443 (1912).

This section does not apply to sale of account due a county. *Allen v. Barnett*, 186 Ark. 494, 54 S.W.2d 399 (1932).

Penalty.

An indictment of a county judge under this section is defective if it fails to allege that the neglect was willful. *Casey v. State*, 53 Ark. 334, 14 S.W. 90 (1890).

If a county judge is liable to indictment for failure to require a sheriff to make a quarterly settlement of the fees and emoluments of his office, an indictment of a county judge for failure to make such a settlement is defective in failing to allege that the sheriff did not make the settlement. *Williams v. State*, 93 Ark. 81, 123 S.W. 780 (1909).

A county judge cannot be convicted for a mere negligent performance of his duty in allowance of an account against the county. *Bromley v. State*, 136 Ark. 270, 206 S.W. 436 (1918).

Cited: *Chicot County v. Kruse*, 47 Ark. 80, 14 S.W. 469 (1885).

14-23-107. Enforcing provisions against allowances in excess of revenues.

(a)(1) It shall be the express duty of the prosecuting attorney in each respective judicial district in this state to enforce, without requiring affidavits of information, the terms and conditions of Arkansas Constitution, Amendment 10, wherein it is provided, among other things, that no county judge, county clerk, or other county officer shall sign or issue any scrip or warrant, or make any allowance for any purpose whatsoever, or authorize the issuance of any contracts or other scrip or other evidence of indebtedness in excess of the revenue received from all sources.

(2) Included within the terms and conditions of Arkansas Constitution, Amendment 10, are county turnback funds of every kind and character for any current fiscal year.

(b)(1) If any prosecuting attorney or deputy prosecuting attorney in any judicial district of this state fails to enforce the provisions of Arkansas Constitution, Amendment 10, and the application of its terms and conditions to all turnback funds flowing to any county of the state, he shall be liable to impeachment in office.

(2) In order that the prosecuting attorney and deputy prosecuting attorney can carry out their duties as prescribed in this section, the county treasurer of each county shall provide upon request to the prosecuting attorney or deputy prosecuting attorney of the judicial district in which the county is located a copy of the financial report which the county treasurer is required by § 14-20-105 to file with the quorum court of the county.

History. Acts 1937, No. 193, §§ 1, 2; Pope's Dig., §§ 2558, 2559; Acts 1939, No. 299, §§ 2-4; A.S.A. 1947, §§ 17-711, 17-712, 17-712n; Acts 1987, No. 724, § 2; 1995, No. 232, § 5.

Amendments. The 1995 amendment deleted (b)(2)(B); and in present (b)(2),

substituted "shall provide upon request to" for "shall file monthly with" and "substituted "by § 14-20-105" for "by law."

Cross References. Contracts in excess of appropriations prohibited, § 14-20-106.

Impeachment proceedings, § 21-12-201 et seq.

CASE NOTES

ANALYSIS

Constitutionality.

In general.

Purpose.

Prosecuting attorney.

Turnback funds.

Constitutionality.

This section was constitutionally enacted. *Carpenter v. McLeod*, 202 Ark. 359, 150 S.W.2d 607 (1941).

This section is in conflict with Ark. Const. Amend. 20 as in effect, the state borrows money and pledges its revenues. *Carpenter v. McLeod*, 202 Ark. 359, 150 S.W.2d 607 (1941).

In General.

This section is not one where a law was revised, amended, or the provisions thereof extended or conferred by reference to its title only. *Taylor v. J.A. Riggs Tractor Co.*, 197 Ark. 383, 122 S.W.2d 608 (1938).

Purpose.

This section is intended to prevent expenditures in excess of county revenues for fiscal year in which contract is made

from county turnback fund. *Taylor v. J.A. Riggs Tractor Co.*, 197 Ark. 383, 122 S.W.2d 608 (1938).

Prosecuting Attorney.

It is the express duty of a prosecuting attorney to enforce the terms of Ark. Const. Amend. 10, dealing with the prohibition against a county judge authorizing any contract in excess of the revenues. *Goodwin v. State*, 235 Ark. 457, 360 S.W.2d 490 (1962).

Turnback Funds.

Subsection (a), being purely descriptive, has no legislative force or effect and can place no limitation upon the expenditure of a turnback fund. *Taylor v. J.A. Riggs Tractor Co.*, 197 Ark. 383, 122 S.W.2d 608 (1938).

Although the effect of this section was to give to a turnback fund all the attributes of a county fund, a turnback fund, not being one within the orbit of Ark. Const. Amend. 10, may be dealt with by the state through legislative action. *Carpenter v. McLeod*, 202 Ark. 359, 150 S.W.2d 607 (1941).

14-23-108. Unauthorized or constructive fees prohibited.

(a) The county courts of the counties in this state are prohibited from auditing an officer and from allowing to any officer any fee or allowance not specifically allowed the officer by law, and in no case shall constructive fees be allowed to or paid officers by any county of this state.

(b) Any person violating any of the provisions of this section or § 14-23-102, or corruptly charging or receiving from any county a greater sum than that allowed by law, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500), with the conviction working a forfeiture of the office.

History. Acts 1873, No. 114, §§ 1, 9, p. 277; C. & M. Dig., §§ 2034, 2811; Pope's Dig., §§ 2585, 3529; A.S.A. 1947, §§ 17-708, 17-709.

Cross References. Penalty for illegal fees, § 21-6-103.

CASE NOTES

ANALYSIS

In general.
Attorneys.
Clerks.
Sheriffs.
Treasurers.

In General.

A court cannot allow fees except on statutory authority. *Honey v. Greene County*, 102 Ark. 106, 143 S.W. 592 (1912).

Traveling expenses and expenses incurred in the purchase of postage stamps could not be charged against the county, and an act placing the officers of a county on salary did not enlarge or vary this section. *Columbia County v. Rowe*, 111 Ark. 141, 163 S.W. 519 (1914).

Attorneys.

A person acting as deputy prosecuting attorney under authority of the prosecuting attorney, but not appointed in writing, without the appointment being approved by the circuit court, such a person is a de facto officer only, not one de jure, and is not entitled to collect the fees and emoluments of the office. *Williford v. Eason*, 110 Ark. 303, 161 S.W. 498 (1913).

County was not liable for fees for special attorney employed by county judge to defend proceedings brought to restrain building of county courthouse. *Oglesby v. Fort Smith Dist.*, 119 Ark. 567, 179 S.W. 178, 1199 (1915).

Clerks.

County clerk was not entitled to fee of 10 cents for each warrant presented by treasurer for allowance. *Johnson County v. Bunch*, 63 Ark. 315, 38 S.W. 518 (1896).

County was not liable to county clerk for his fee for filing accounts of claimant against county. *Prairie County v. Vaughan*, 64 Ark. 203, 41 S.W. 420 (1897).

County clerk was entitled to fee of 10 cents for entering each order of allowance and 10 cents for each warrant issued on allowance; however, the clerk was not entitled to be paid for warrants ordered but not issued. *St. Francis County v. Folbre*, 66 Ark. 91, 48 S.W. 1070 (1899).

County was liable to claimant for costs, including county clerk's fee for filing claim. *Jefferson County v. Philpot*, 66 Ark. 243, 50 S.W. 453 (1899).

Allowance of a warrant was not a settlement entitling a county clerk to a fee of 10 cents for making settlement of each account with the county. *Duncan v. Scott County*, 70 Ark. 607, 70 S.W. 314 (1902).

County was not liable for county clerk's fee for filing county warrants for allowance and reissuance. *Duncan v. Scott County*, 70 Ark. 607, 70 S.W. 314 (1902).

Sheriffs.

Sheriff was entitled to fees for keeping county prisoners. *Cain v. Woodruff County*, 89 Ark. 456, 117 S.W. 768 (1909).

Right of a sheriff to charge fees is derived from and dependent upon statute,

and he is not entitled to any compensation except as is given to him by law. *Miller County v. Magee*, 177 Ark. 752, 7 S.W.2d 973 (1928).

Treasurers.

County treasurer who succeeded himself was entitled to commissions on funds carried over from one term to another, except as to school funds. *Shaver v. Sharp County*, 62 Ark. 76, 34 S.W. 261 (1896).

Where county treasurer collected a fee to which he was not entitled and which constituted a fraud in law, after the expiration of two years and the matter had passed beyond the control of the county court, equity had jurisdiction to relieve against the fraud. *Fuller v. State*, 112 Ark. 91, 164 S.W. 770 (1914).

Cited: *Johnson County v. Bost*, 139 Ark. 35, 213 S.W. 388 (1919).

14-23-109. Time limit on payment of allowed claims.

(a)(1) Whenever any claim of any person for services rendered any county in this state or material furnished shall have been adjusted and allowed by the county court and ordered paid, it shall be the duty of the person for whom the allowance shall have been made to call on the county clerk of the county in which the allowance is made within three (3) years from the date of the allowance and procure a warrant on the treasurer of the county in which the allowance shall have been made.

(2) All allowances shall be barred if not demanded within three (3) years from the date of their allowance.

(3) All warrants issued by any county clerk and remaining unclaimed in his possession shall be cancelled by the county court whenever the allowances on which they are based shall be barred under this section.

(b) At the expiration of three (3) years from the date of the allowances, if the claimant has not demanded his warrant from the clerk, it shall be the duty of the clerk to enter a marginal note on the county court record to the effect that the claim is barred by limitation, and it shall be unlawful for any clerk to issue any warrant based upon the claim thereafter, and the claimants shall not thereafter be allowed anything for that particular service or material furnished, by revival or otherwise.

History. Acts 1895, No. 135, §§ 1, 2, p. 198; C. & M. Dig., §§ 2003, 2004; Pope's Dig., §§ 2549, 2550; A.S.A. 1947, §§ 17-713, 17-714.

Cross References. Issuance of warrant on claim, § 14-24-101.

SUBCHAPTER 2 — PRESENTMENT TO COUNTY COURT

SECTION.

- 14-23-201. Applicability.
- 14-23-202. Penalty.
- 14-23-203. Claims filed with county clerk.
- 14-23-204. Information recorded on dockets.
- 14-23-205. Recording on proper docket.

SECTION.

- 14-23-206. Approval or disapproval by county court.
- 14-23-207. Payment of claims generally.
- 14-23-208. Payment of rent on equipment and machinery.

Effective Dates. Acts 1961, No. 139, § 10; Feb. 22, 1961. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State pertaining to the method of filing and approving claims against counties are totally inadequate and that in order to provide for the proper

expenditure of county funds, the immediate passage of this Act is necessary. Therefore, an emergency is hereby declared to exist, and this Act, being immediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

14-23-201. Applicability.

The provisions of this subchapter shall not be applicable to any county in this state having a county comptroller established pursuant to legislative act.

History. Acts 1961, No. 139, § 6; A.S.A. 1947, § 17-720.

14-23-202. Penalty.

Any person violating the provisions of this subchapter shall be guilty of a misdemeanor. In addition, any county official violating this subchapter shall be guilty of malfeasance in office and, upon conviction, shall be removed from office.

History. Acts 1961, No. 139, § 8; A.S.A. 1947, § 17-722.

14-23-203. Claims filed with county clerk.

(a) Any person, firm, partnership, corporation, or association having a claim against any county of this state for goods and supplies, except sundry supplies used in the administration of the county offices, and materials, equipment, machinery, or any other item of tangible personal property payable from the county general fund or the county road fund shall present a claim for payment to the county clerk of the county in the manner and form as is required by law.

(b) The clerk shall keep and maintain two (2) dockets, on which the claims shall be recorded, as provided in § 14-23-204, as follows:

(1) A "county court claims docket" on which shall be recorded all claims payable from the county general fund; and

(2) A "county road claims docket" on which shall be recorded all claims payable from the county road fund.

History. Acts 1961, No. 139, § 1; A.S.A. 1947, § 17-715.

14-23-204. Information recorded on dockets.

The dockets required in § 14-23-203 shall include columns for recording the following information with respect to each claim filed:

- (1) The claim number, to be listed consecutively;
- (2) The date the claim is filed;
- (3) The name and address of the person or firm presenting the claim;
- (4) The amount of the claim;
- (5) The date presented to the county court;
- (6) The action of the county court regarding the claim and the date thereof;
- (7) The warrant number, and the date of issuance thereof, for payment of the claim, if any.

History. Acts 1961, No. 139, § 2;
A.S.A. 1947, § 17-716.

14-23-205. Recording on proper docket.

(a)(1) Upon receipt of any claim against the county, the county clerk shall examine the claim and determine whether, if allowed, it would be payable from the county general fund or county road fund.

(2) Upon making this determination, he shall record the claim on the appropriate docket as provided in § 14-23-203.

(b)(1) All claims shall be recorded on the date of receipt, and at the time of recording them the clerk shall stamp or write on the statement or bill representing the claim the date of receipt and the number of the claim.

(2) All claims shall be numbered consecutively on the respective dockets.

History. Acts 1961, No. 139, § 3;
A.S.A. 1947, § 17-717.

14-23-206. Approval or disapproval by county court.

(a)(1) No later than fifteen (15) days, holidays excepted, from the date on which any claim is received and recorded, the county clerk shall present it to the county court. Within thirty (30) days from the date on which the claim is presented to the court, the court shall enter an order approving or disapproving the claim.

(2) The action of the court and the date thereof shall be entered in the appropriate docket on which the claim is recorded.

(b) The court shall consider each claim covered by this subchapter in the order in which it appears on the docket being considered and shall not proceed to consider any claim bearing a subsequent number on the docket until an order of approval or disapproval of all preceding numbered claims has been entered.

(c) Any person aggrieved by the order of the court concerning any claim may appeal from the order in the manner provided by law for appeals from orders of the court.

History. Acts 1961, No. 139, § 4;
A.S.A. 1947, § 17-718.

14-23-207. Payment of claims generally.

(a) All warrants issued by the county clerk of any county in this state on order of the county court for the payment of any claim on either of the dockets provided in § 14-23-203 shall be issued in the order in which the claim therefor appears on the appropriate docket.

(b) The clerk shall be liable on his official bond for any loss suffered by any person due to any violation of the provisions of this subchapter by the clerk.

History. Acts 1961, No. 139, § 5;
A.S.A. 1947, § 17-719.

14-23-208. Payment of rent on equipment and machinery.

(a) It shall be unlawful for the county court to approve any claim for the payment of rent on equipment and machinery used by the county, and it shall be unlawful for the county clerk to issue any warrant for the payment of any such claim which may have been allowed by the court, unless a written contract providing for the payment of the rent shall have been first approved by order of the court. This copy shall be delivered by the county judge to the clerk, who shall record it in the minutes of the court in the office of the clerk, to be kept with the appropriate docket provided for by § 14-23-203.

(b) The provisions of this section shall apply to all rentals of equipment and machinery by the county whether they shall be for temporary use only, or whether they shall be in the form of a rental-purchase or lease-purchase agreement or contract whereby the county rents or leases such equipment or machinery and under the terms of which agreement the county has the option to buy the equipment or machinery and to apply the rental payments on the purchase price.

History. Acts 1961, No. 139, § 7;
A.S.A. 1947, § 17-721.

CHAPTER 24

COUNTY WARRANTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. PAYMENT BY CHECK.

RESEARCH REFERENCES

C.J.S. 20 C.J.S., Counties, § 248 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

14-24-101. Issuance of warrant — Payment.

14-24-102. Form of warrant.

14-24-103. Signing — Numbering.

14-24-104. Clerk's register of warrants.

14-24-105. Cancellation of scrip.

14-24-106. Loss of certificates.

14-24-107. Fraudulent or wrongfully issued warrants.

14-24-108. Order of payment.

14-24-109. Receipt for public payments.

14-24-110, 14-24-111. [Repealed.]

SECTION.

14-24-112. Record of redeemed warrants.

14-24-113. [Repealed.]

14-24-114. Calling in outstanding scrip.

14-24-115. Notice of redemption, etc.

14-24-116. Failure to present scrip.

14-24-117. Right to call in annually.

14-24-118. Duty on presentation.

14-24-119. Time scrip must be presented.

14-24-120. Time warrants and checks to be redeemed.

14-24-121. Electronic warrants transfer system.

A.C.R.C. Notes. References to "this subchapter" in §§ 14-24-101 — 14-24-120 may not apply to § 14-24-121 which was enacted subsequently.

Cross References. Cancellation of warrant when claim barred, § 14-23-109.

Effective Dates. Acts 1846, p. 62, § 6: effective on passage.

Acts 1853, p. 81, § 2: effective on passage.

Acts 1857, p. 50, § 4: effective on passage.

Acts 1875, No. 57, § 3: effective on passage.

Acts 1875, No. 80, § 5: effective on passage.

Acts 1969, No. 306, § 5: Mar. 21, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that many warrants issued by the County Treasurer of the various counties in this State are not redeemed by the payee of such warrants; that under these circumstances the County Treasurer is not able to close his books to determine the actual liabilities of the County; and that only by placing a limitation upon the period for which such warrants may be redeemed can this situ-

ation be remedied; therefore, an emergency is declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1987, No. 269, § 3: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that under present law, county warrants are redeemable at any time within three (3) years from the date of issuance; that this extended period for redeemed county warrants places a severe hardship on the various counties; that it is essential to the efficient and effective operation of county government that warrants and checks issued by the county be redeemed within one (1) year from the date of issuance and that this Act is designed to limit the period within which such warrants and checks may be redeemed and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect on and after July 1, 1987."

14-24-101. Issuance of warrant — Payment.

(a) Whenever any allowance has been made by any county court, in accordance with §§ 14-23-104 and 14-23-105, when requested by the person in whose favor allowance has been made, or any person authorized to receive it, the county clerk shall issue his warrant or check on the treasurer of his county for the amount of the allowance.

The treasurer shall pay it out of cash available in the fund on which the warrant or check is drawn.

(b)(1) If money is not available in the fund on which the warrant or check is drawn, the treasurer, in accordance with § 14-15-805, shall refuse payment of the warrant or check until such time as the funds are available.

(2) In counties using the "batch-redeem" warrant system, the county clerk shall ascertain from county treasurer's records that cash is available in the fund on which the warrant or check is to be drawn before the warrant or check is issued.

History. Acts 1873, No. 31, § 13, p. 53; A.S.A. 1947, § 17-801; Acts 1995, No. 232, § 6.

Amendments. The 1995 amendment added (b); and, in (a), inserted "or check" in the first sentence, substituted "out of

cash available in the fund on which the warrant or check is drawn" for "out of any money in the treasury not otherwise appropriated" in the second sentence, and deleted the former third sentence.

CASE NOTES

ANALYSIS

Allowance.

Warrants.

Allowance.

An order of allowance by a county court may be reviewed or opened: (1) By appeal to the circuit court; (2) By certiorari, where it appears upon the fact of the record that the claim allowed was not, by law, a charge against the county and the court had no authority or discretion to allow it upon any evidence that could be advanced; (3) The county court is authorized to call in its warrants for review, etc. and can then reject any warrants founded upon claims illegally or fraudulently allowed; (4) In chancery for fraud, accident, or mistake. *State ex rel. Izard County v. Hinkle*, 37 Ark. 532 (1881).

An order of allowance is in the nature of a judgment and cannot be impeached collaterally by proof that the debt had been paid before the order was made. *Cope v. Collins*, 37 Ark. 649 (1881).

The allowance or rejection of a claim by a county court is in the nature of a judgment, and after the lapse of the term, the court loses all control over it and the same matter cannot be litigated again between the same parties except upon review in a higher court. *Lincoln County v. Simmons*, 39 Ark. 485 (1882); *Howard v. State*, 72 Ark. 586, 82 S.W. 196 (1904).

Warrants.

Warrants issued by county clerk without an order of the county court directing their issue are void and cannot be made the foundation of a claim against the county. *Parsel v. Barnes & Bro.*, 25 Ark. 261 (1868) (decision under prior law).

Warrants issued by pretended county court not sitting at authorized place are void. *Williams v. Reutzell*, 60 Ark. 155, 29 S.W. 374 (1895).

Delivery of warrant to wrong person does not pass title. *Shelton v. Landers*, 167 Ark. 638, 270 S.W. 522 (1925).

Cited: *Jones v. Capers*, 231 Ark. 870, 333 S.W.2d 242 (1960).

14-24-102. Form of warrant.

A county warrant shall be in the following form: "No..... Treasurer of the County of pay to, or order dollars, out of any money in the treasury appropriated for county expenditures (or express the particular fund out of which the

warrant is to be paid). Given at, this day of,
19.....
\$.....

A.B., Clerk.”

History. Rev. Stat., ch. 41, § 28; C. & M. Dig., § 1999; Pope’s Dig., § 2545; Acts 1957, No. 162, § 2; A.S.A. 1947, § 17-802.

Cross References. Warrant made payable to person in whose favor allowance was made or bearer, § 14-20-114.

Warrants to specify fund or appropriation on which drawn, § 14-20-114.

CASE NOTES

Irregular Form.

County warrants not strictly following this section, but containing all of its essential requirements, are invalid only to the extent that they contain provisions not authorized by statute. *Franklin County v. Harriman Nat’l Bank*, 19 F.2d 182 (8th Cir.), cert. denied, 275 U.S. 542, 48 S. Ct. 37, 72 L. Ed. 416 (1927).

14-24-103. Signing — Numbering.

County warrants shall be signed by the clerk of the county court and shall be numbered progressively throughout the year, commencing on January 1 in each year.

History. Rev. Stat., ch. 41, § 29; C. & M. Dig., § 2000; Pope’s Dig., § 2546; A.S.A. 1947, § 17-803.

14-24-104. Clerk’s register of warrants.

- (a) Each clerk of the county court shall keep a register of all warrants issued, in which he shall set forth the numbers, date, name of person in whose favor drawn, on what account, and the amount thereof.
- (b) The register may be in the following form:

NO.	DATE	IN WHOSE FAVOR DRAWN	ON WHAT ACCOUNT	AMOUNT Dols. / Cts.
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History. Rev. Stat., ch. 41, § 30; C. & M. Dig., § 2001; Pope’s Dig., § 2547; A.S.A. 1947, § 17-804.

14-24-105. Cancellation of scrip.

It shall be the duty of the county court of each county, on application of any person holding scrip against the county, to cancel the scrip and cause warrants to be issued therefor in accordance with the provisions of this subchapter.

History. Rev. Stat., ch. 41, § 40; C. & M. Dig., § 2006; Pope’s Dig., § 2552; A.S.A. 1947, § 17-806.

14-24-106. Loss of certificates.

When any person shall produce proof, to the satisfaction of the county court, that he has lost any one (1) or more county certificates or scrip of any certain amount owned by him and that it has not been paid over on settlement with the county treasury, it shall be the duty of the county court to order other certificates to be issued to the owner.

History. Acts 1836, § 2, p. 94; C. & M. Dig., § 2005; Pope's Dig., § 2551; A.S.A. 1947, § 17-807.

CASE NOTES**ANALYSIS**

Reissuance.
Setoff.

Reissuance.

County court may issue new scrip for that which has been lost or burned. *Craig v. Chicot County*, 40 Ark. 233 (1882).

The owner of a lost warrant may apply through an agent for reissue. *Twerell v.*

Ashley County, 137 Ark. 200, 208 S.W. 585 (1919).

Setoff.

In the settlement of accounts of collectors of public revenue, attempts to enforce their claims for scrip alleged to be burned by way of setoff ought not to be encouraged in the absence of statutory authority. *Craig v. Chicot County*, 40 Ark. 233 (1882).

14-24-107. Fraudulent or wrongfully issued warrants.

(a) If, upon adjudication of any warrant by the county court, the warrant shall be found to have been fraudulently or wrongfully issued, without due authority from the court, the court shall endorse such fact thereon and cause it to be deposited, without renewal, in the office of the clerk of the court.

(b) Any clerk who shall fraudulently or wrongfully, without authority of law, issue any such warrant shall be deemed guilty of a felony and, upon conviction, shall be imprisoned in the penitentiary for not less than one (1) year and not more than three (3) years.

History. Acts 1846, § 4, p. 62; 1875, § 2009; Pope's Dig., § 2555; A.S.A. 1947, No. 57, §§ 1, 2, p. 147; C. & M. Dig., § 17-808.

CASE NOTES**ANALYSIS**

Construction.
Appeals.

Construction.

Words "any such warrants" refer to words "fraudulently or wrongfully, without authority of law, issue" and not to the words "shall endorse such fact thereon and cause it to be deposited." *Porter v. State*, 188 Ark. 6, 64 S.W.2d 336 (1933).

Appeals.

An order of the county court rejecting and cancelling warrants as fraudulent or for any other purpose is a judgment from which the holder of such warrants adversely affected has a right to appeal. *Covington v. Johnson County*, 172 Ark. 442, 289 S.W. 326 (1926).

14-24-108. Order of payment.

All county scrip, and every warrant issued in cancellation of any county scrip in any county of this state, according to the provisions of § 14-24-105, shall be redeemed and paid by the county treasurer in the order of their number and date. No scrip or warrants shall be thus discharged in preference to any of older dates, or until all of a prior date are paid, if the county treasurer upon whom the scrip and warrants are drawn shall not be able to meet all demands against him.

History. Acts 1846, § 2, p. 62; C. & M. Dig., § 2007; Pope's Dig., § 2553; A.S.A. 1947, § 17-809.

CASE NOTES

ANALYSIS

Applicability.
Payment.

Applicability.

This section applies to all county warrants and is not limited to warrants issued in cancellation of county scrip. *Stanfield v. Kincannon*, 185 Ark. 120, 46 S.W.2d 22 (1932).

Warrants drawn on county fund are redeemable in order of their number and date. *Stanfield v. Kincannon*, 185 Ark. 120, 46 S.W.2d 22 (1932); *Stanfield v. Friddle*, 185 Ark. 873, 50 S.W.2d 237 (1932).

Payment.

Statute of limitations could be pleaded to petition for mandamus to compel county treasurer to pay county warrant delivered more than five years, notwithstanding it had county seal affixed to it. *Crudup v. Ramsey*, 54 Ark. 168, 15 S.W. 458 (1891) (decision prior to enactment of § 14-24-120).

When there is an invalid judgment against county on valid warrants, invalidity of judgment is not ground for restraining county treasurer from paying funds raised therefor. *Bush v. Wolf*, 55 Ark. 124, 17 S.W. 709 (1891).

14-24-109. Receipt for public payments.

All county scrip and warrants drawn on the county treasury in any county in this state shall be received, irrespective of their number and date, in payment of all taxes, duties, fines, penalties, and forfeitures accruing to the county.

History. Acts 1846, § 3, p. 62; C. & M. Dig., § 2008; Pope's Dig., § 2554; A.S.A. 1947, § 17-810.

Cross References. County taxes may be paid in county warrants, §§ 26-35-502, 26-35-504.

CASE NOTES

ANALYSIS

Constitutionality.
Fees.
Taxes.

Constitutionality.

This section was held not to contravene provisions of the United States Constitu-

tion declaring that nothing but gold and silver shall be made legal tender. *State ex rel. Chicot County v. Rives*, 12 Ark. 721 (1852).

Fees.

Warrants were held not receivable in payment of clerk's fees. *Powell v. Durden*, 61 Ark. 21, 31 S.W. 740 (1895).

Taxes.

A county cannot refuse to receive its warrants for taxes, regardless of date of issue. *Daniel v. Askew*, 36 Ark. 487 (1880); *Vale v. Buchanan*, 98 Ark. 299, 135 S.W. 848 (1911) (decisions prior to enactment of § 14-24-120).

A tax to build a new courthouse may be paid in county warrants drawn upon funds appropriated for ordinary county purposes. *Stillwell v. Jackson*, 77 Ark. 250, 93 S.W. 71 (1905).

Valid county warrants may be received in payment of taxes due to the county even though they are prior warrants not paid or provided for. *Stanfield v. Friddle*, 185 Ark. 873, 50 S.W.2d 237 (1932).

On redemption of land sold to state for taxes, treasurer is required to accept county warrants for portion of taxes owing to the county. *Bradford v. Burrow*, 188 Ark. 380, 65 S.W.2d 554 (1933).

14-24-110, 14-24-111. [Repealed.]

Publisher's Notes. These sections, concerning treasurer's register of warrants and the filing of redeemed warrants, were repealed by Acts 1993, No. 1279, § 1. They were derived from the following sources:

14-24-110. Rev. Stat., ch. 41, §§ 31, 32;

C. & M. Dig., §§ 1922, 1923; Pope's Dig., §§ 2438, 2439; A.S.A. 1947, §§ 17-811, 17-812.

14-24-111. Rev. Stat., ch. 41, § 34; C. & M. Dig., § 1924; Pope's Dig., § 2440; A.S.A. 1947, § 17-813.

14-24-112. Record of redeemed warrants.

It shall be the duty of the county clerk of each county in the State of Arkansas to enter in a book, to be provided by him for that purpose, the amount, number, and date of all redeemed scrip or warrants that may have been cancelled, so as to show at all times the full amount of the indebtedness of the county.

History. Acts 1853, § 1, p. 81; C. & M. Dig., § 2010; Pope's Dig., § 2556; A.S.A. 1947, § 17-814.

14-24-113. [Repealed.]

Publisher's Notes. This section, concerning preservation and destruction of warrants, was repealed by Acts 1993, No. 1279, § 1. The section was derived from

Acts 1931, No. 41, § 11; Pope's Dig., §§ 1728, 2520; Acts 1979, No. 279, § 1, A.S.A. 1947, § 17-815.

14-24-114. Calling in outstanding scrip.

Whenever the county court of any county in this state may deem it expedient to call in the outstanding scrip of the county in order to redeem, cancel, reissue, or classify the scrip under existing laws, or for any other lawful purpose, it shall be the duty of the court to make an order for that purpose, fixing the time for the presentation of the scrip, which shall be at least three (3) months from the date of the order.

History. Acts 1857, § 1, p. 50; C. & M. Dig., § 1994; Pope's Dig., § 2540; A.S.A. 1947, § 17-816.

CASE NOTES

ANALYSIS

In general.
Applicability.
Cancellation.
Exchange of warrants.
Other lawful purposes.
Reissuance.
Time for presentation.

In General.

A federal court was not deprived of jurisdiction by the fact that, prior to a nonresident's action on county warrants, the nonresident, as required by a calling in order, had filed the warrants with the county court and that court had made no further order respecting the warrants. *Desha County v. Crocker First Nat'l Bank*, 72 F.2d 359 (8th Cir. 1934).

If county judge, disregarding his duty to pay indispensable obligations before permissive ones, allows contractual obligations within the revenue for the year, warrant issued in payment of contractual claims remains valid even after issuance of a warrant in payment of indispensable claim when county's total revenue had been expended, validity of any warrant being dependent upon the state of the county's revenues at the time of its allowance. *Miller County v. Blocker*, 192 Ark. 101, 90 S.W.2d 218 (1936).

Applicability.

This section applies to county road warrants. *A.L. Greenberg Iron Co. v. Wood*, 153 Ark. 371, 240 S.W. 1074 (1922).

County warrants issued by county court and payable out of road fund apportioned to a certain road district are within the contemplation of this section and are barred unless presented within the designated time. *Wilkes v. Bank of Augusta & Trust Co.*, 163 Ark. 455, 260 S.W. 398 (1924).

Warrants drawn on highway turnback funds are county warrants within the

meaning of this section. *United States San. Specialty Corp. v. Pike County*, 195 Ark. 724, 113 S.W.2d 1090 (1938).

Cancellation.

A warrant payable out of highway fund for sanitary supplies sold to county, being illegal on its face, was held subject to cancellation. *United States San. Specialty Corp. v. Pike County*, 195 Ark. 724, 113 S.W.2d 1090 (1938).

Exchange of Warrants.

A contract between a county judge and the holders of certain county warrants, each for a large amount, providing for the exchange of the warrants for warrants of smaller amounts payable over a longer period of years was not prohibited by Ark. Const. Amend. 10. *Alphin v. Tatum*, 189 Ark. 862, 75 S.W.2d 377 (1934).

Other Lawful Purposes.

The ascertainment of the actual financial condition of a county is a sufficient legal purpose to call in outstanding scrip of the county. *Cole v. Schoonover*, 117 Ark. 254, 174 S.W. 539 (1915).

Reissuance.

The county court, when examining scrip under a calling in order, may refuse to reissue when it is shown that the original judgment of allowance was void. *Adams v. Van Buren County*, 200 Ark. 269, 139 S.W.2d 9 (1940).

Time for Presentation.

An order under this section which gives less than three months from its date to the time appointed for presenting the warrants is invalid, and a scrip holder is not obliged to appeal from it or quash it by certiorari, but may compel the collector by mandamus to receive his scrip for county taxes. *Fry v. Reynolds*, 33 Ark. 450 (1878); *Howell v. Hogins*, 37 Ark. 110 (1881).

Cited: *Irwin v. Alexander*, 184 Ark. 572, 43 S.W.2d 85 (1931).

14-24-115. Notice of redemption, etc.

It shall be the duty of the clerk of the county court to furnish the sheriff of the county with a true copy of the order of the court within ten (10) days after the adjournment of the court. Then it shall be the duty of the sheriff to notify the holders of the county scrip to present the scrip to the court, at the time and place fixed, for redemption, cancellation, reissuance, or classification of it, or for any other purpose whatever specified in the order of the court, by putting up at the courthouse door and at the election precincts in each township of the county, at least thirty (30) days before the time appointed by the order of the court for the presentation of the scrip, a true copy of the order of the court in the premises, and by publishing it in newspapers printed and published in the State of Arkansas for two (2) weeks in succession, the last insertion to be at least thirty (30) days before the time fixed by the court for the presentation of the scrip.

History. Acts 1857, § 2, p. 50; C. & M. Dig., § 1995; Pope's Dig., § 2541; A.S.A. 1947, § 17-817.

CASE NOTES**ANALYSIS**

In general.
Construction.
Posting.
Presentment.
Publication.

In General.

Sheriff's return was held conclusive under this section. *Monroe County v. Clark*, 134 Ark. 100, 203 S.W. 264 (1918).

Construction.

This section must be strictly complied with. *Lusk v. Perkins*, 48 Ark. 238, 2 S.W. 847 (1887); *Gibney v. Crawford*, 51 Ark. 34, 9 S.W. 309 (1888); *Crudup v. Richardson*, 61 Ark. 259, 32 S.W. 684 (1895); *Baker v. York*, 65 Ark. 142, 45 S.W. 57 (1898); *Miller County v. Gazola*, 65 Ark. 353, 46 S.W. 423 (1898).

This section must be strictly complied with; notices must be posted in every voting precinct. *Haltom v. Craighead County*, 129 Ark. 207, 195 S.W. 354 (1917).

Posting.

That notices were posted as required by this section can only be proved by record, and not by parol. *Gibney v. Crawford*, 51 Ark. 34, 9 S.W. 309 (1888).

Where sheriff's return fails to show that

the notice or the order was posted at the courthouse door, the finding of the court "that proper returns have been made and proper proofs filed" is void because not sustained by the record evidence. *Nevada County v. Williams*, 72 Ark. 394, 81 S.W. 384 (1904).

An order is not void because sheriff's return shows that the notice was posted at the "entrance" of the courthouse. *Yell County v. Wills*, 83 Ark. 229, 103 S.W. 618 (1907).

An order is not void because the sheriff's return shows that he posted the notice at each of the election precincts in the townships named in the return without showing that these townships were all the ones in the county. *Chicago, R.I. & P. Ry. v. Perry County*, 87 Ark. 406, 112 S.W. 977 (1908).

Presentment.

Fixing Sunday as day for presenting warrants does not affect the validity of the proceedings. *Crudup v. Richardson*, 61 Ark. 259, 32 S.W. 684 (1895).

Publication.

When an order is published in only one newspaper, scrip will not be barred by the failure of a holder to present it within the time required by the order, though he has actual notice of it; the notice must be

given as required by this section, but presentation of the scrip is a waiver of the insufficiency of the notice. *Allen v. Bankston*, 33 Ark. 740 (1878); *Lusk v. Perkins*, 48 Ark. 238, 2 S.W. 847 (1887).

An order is invalid where it appears

neither in the judgment record nor sheriff's return that one of the newspapers in which notice was given is published in the county. *Crudup v. Richardson*, 61 Ark. 259, 32 S.W. 684 (1895).

14-24-116. Failure to present scrip.

All persons who shall hold any scrip of the county and neglect or refuse to present it, as required by the order of the county court of the county and the notice as provided in §§ 14-24-114 and 14-24-115, shall thereafter be forever debarred from deriving any benefits from their claims.

History. Acts 1857, § 3, p. 50; C. & M. Dig., § 1996; Pope's Dig., § 2542; A.S.A. 1947, § 17-818.

CASE NOTES

ANALYSIS

Constitutionality.
In general.

Constitutionality.

This section is constitutional. *Parsel v. Barnes & Bro.*, 25 Ark. 261 (1868).

In General.

Warrants not presented as required by an order of a county court are forever barred. *Parsel v. Barnes & Bro.*, 25 Ark. 261 (1868).

This section is the law of the contracts as to warrants issued after its passage. *Allen v. Bankston*, 33 Ark. 740 (1878); *Desha County v. Newman*, 33 Ark. 788 (1878); *Cope v. Collins*, 37 Ark. 649 (1881).

One who fails to present his warrants when called for is barred from the collection of the warrants thereafter, without any further order or judgment of the court. *Cole v. Schoonover*, 117 Ark. 254, 174 S.W. 539 (1915).

14-24-117. Right to call in annually.

Every year the county court of any county in this state may call in the outstanding scrip or warrants of the county for the purposes of cancelling and reissuing them.

History. Acts 1875, No. 80, § 1, p. 189; C. & M. Dig., § 1997; Pope's Dig., § 2543; A.S.A. 1947, § 17-819.

CASE NOTES

In General.

An order is not void because it fails to recite that no such order had been made by the court within the previous year. *Yell*

County v. Wills, 83 Ark. 229, 103 S.W. 618 (1907); *Chicago, R.I. & P. Ry. v. Perry County*, 87 Ark. 406, 112 S.W. 977 (1908).

14-24-118. Duty on presentation.

When the scrip or warrants so called in shall be presented to the county court, it shall be the duty of the court to examine them thoroughly and to reject all such evidences of indebtedness, as in their judgment, their county is not justly and legally bound to pay, subject to appeal to the circuit court.

History. Acts 1875, No. 80, § 3, p. 189; C. & M. Dig., § 1998; Pope's Dig., § 2544; A.S.A. 1947, § 17-820.

CASE NOTES

ANALYSIS

In general.
Appeals.
Cancellation.
Publication.
Rejection.

In General.

Orders with reference to calling in county warrants must be made by county court, not by county judge, and must be spread upon the record. *Covington v. Johnson County*, 172 Ark. 442, 289 S.W. 326 (1926).

Appeals.

On appeal to circuit court from an order rejecting warrants presented for reissuance, the court can render only such judgment as the county court could render; it can exercise no equity power, such as directing a reference to a master to state an account between the holder of the warrants and the county; it can only ascertain from the evidence whether the warrants are legal or illegal demands. *Pride v. State*, 52 Ark. 502, 13 S.W. 135 (1890).

Cancellation.

Warrants not presented are not affected by an order of cancellation unless all the

statutory requirements are complied with and the compliance therewith shown in the statutory method. *Gibney v. Crawford*, 51 Ark. 34, 9 S.W. 309 (1888).

Publication.

When proof of publication fails to show that all of the requirements of the publication were complied with, it is a nullity and cannot be received as evidence of the publication required. *Gibney v. Crawford*, 51 Ark. 34, 9 S.W. 309 (1888).

A recital of the judgment of a county court that the notice of the order calling in warrants had been given as required by law is conclusive. *Newton v. Askew*, 53 Ark. 476, 14 S.W. 670 (1890).

Rejection.

It is the duty of the court to refuse to allow a warrant which, after its issuance, was invalidated by order of the circuit court on appeal. *Murphy v. Garland County*, 99 Ark. 173, 137 S.W. 813 (1911).

Those warrants may be rejected which could not have been valid claims against the county, or where the judgment of allowance was obtained by fraud. *Monroe County v. Brown*, 118 Ark. 524, 177 S.W. 40 (1915).

An order of rejection must be entered of record. *Covington v. Johnson County*, 172 Ark. 442, 289 S.W. 326 (1926).

14-24-119. Time scrip must be presented.

(a) Every two (2) years, all scrip outstanding and unredeemed in any county of the state shall be presented for adjudication to the county court of the county, and if found to be genuine and properly issued, warrants shall be issued upon the county treasurer in cancellation thereof.

(b) All persons holding any county scrip in any county in this state who do not present it for inspection to the county court of the county, at

the times specified in this section shall be rated with the last class to be paid. However, it shall always be good in the payment of taxes and other dues to the county treasury.

History. Acts 1846, §§ 1, 5, p. 62;
A.S.A. 1947, §§ 17-821, 17-822.

14-24-120. Time warrants and checks to be redeemed.

(a) All warrants and checks issued by any county of this state drawn upon the county treasurer shall be valid and redeemable only for a period of one (1) year from the date of issuance.

(b)(1) If any county warrant or check is not redeemed within the time prescribed in subsection (a), it shall be the duty of the county treasurer to cancel the warrant or check.

(2) All warrants and checks issued by a county shall contain on the face thereof the following words: "This warrant (check) void after one (1) year from date of issuance".

History. Acts 1969, No. 306, §§ 1, 2;
A.S.A. 1947, §§ 17-823, 17-824; Acts 1987,
No. 269, § 1.

checks issued prior to July 1, 1987, shall be null and void if not redeemed within three years from date of issuance.

A.C.R.C. Notes. Acts 1987, No. 269, § 1, provided, in part, that warrants and

Cross References. Time limit on payment of allowed claims, § 14-23-109.

14-24-121. Electronic warrants transfer system.

(a) The quorum court of each county may, by ordinance, establish an electronic warrants transfer system directly into payee's accounts in financial institutions in payment of any account allowed against the county.

(b) For purposes of this section counties opting for the electronic warrants transfer system shall not be required to follow the generally established rules concerning the payment of county claims but may establish their own electronic payment method provided that method follows generally accepted accounting principles and leaves an adequate audit trail.

(c) A single electronic warrants transfer may contain payments to multiple payees, appropriations, characters, and funds.

History. Acts 1997, No. 329, § 1.

A.C.R.C. Notes. References to "this subchapter" in §§ 14-24-101 to 14-24-120 may not apply to this section which was enacted subsequently.

The punctuation in this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

SUBCHAPTER 2 — PAYMENT BY CHECK

SECTION.

14-24-201. Purpose.

14-24-202. Modification of warrant system permitted.

SECTION.

14-24-203. Court approval of implementation.

14-24-204. Payment generally.

SECTION.

14-24-205. Check disbursement record.

14-24-206. Claims against school districts.

Cross References. Photographic images of checks, § 14-21-108.

14-24-201. Purpose.

It is the intent of this subchapter to allow the counties to change and modernize, to better comply with current business and banking practices, the warrant system as a means of payment of claims against counties, but all other provisions and procedures required by law relative to claims against counties and those relative to the allowance of payment thereof, shall remain as provided by law.

History. Acts 1975, No. 22, § 2; A.S.A. 1947, § 17-826.

14-24-202. Modification of warrant system permitted.

(a) Effective July 9, 1975, any county may modify the warrant system as a means of payment of claims properly presented and allowed against counties of this state to better comply with current business and banking practices.

(b) All claims properly presented and allowed by the respective county courts and school districts of this state, as provided by law, may be ordered paid by check drawn against county funds maintained by the county treasurer in his official capacity as custodian of the funds.

History. Acts 1975, No. 22, § 1; A.S.A. 1947, § 17-825.

14-24-203. Court approval of implementation.

(a) In implementing the procedures as set forth in §§ 14-24-204 and 14-24-205, the county treasurer and county clerk must jointly petition the county court for approval of such implementation, and none of the procedures set forth shall be followed without court approval.

(b) Adoption of § 14-24-206 shall require the treasurer and the superintendent of each school district to jointly petition the court for approval, and no such procedures shall be implemented without court approval.

History. Acts 1975, No. 22, § 7; A.S.A. 1947, § 17-831.

14-24-204. Payment generally.

(a)(1) It is the intent of this subchapter that, after a claim has been properly presented to a county court with a proper certification and itemization thereof, as provided by law, the county clerk may cause a check to be prepared in payment of the claim. This check must be accompanied by an attached certification from the clerk stating that the check is for payment of a valid claim against the county, properly presented and allowed, as provided by law, the check being presented to the county treasurer for his signature, such check being in triplicate snap-out form, allowing for the following information and distribution:

(A) Original check, after being transmitted to the treasurer for his signature, will be delivered to the party presenting the claim to the treasurer;

(B) Duplicate copy of the check, which will provide the printed certification thereon by the clerk to the treasurer and provide for the original signature of the clerk on the certification, will be maintained by the treasurer;

(C) Triplicate copy of the check, and attached certification which is a part thereof, will be maintained by the clerk, with all supporting documentation for such payment being filed with this copy.

(2) The checks shall be prenumbered and designed in such form that the specific appropriation applicable and particular fund affected out of which the check is to be paid is noted thereon.

(b) In lieu of the provisions of this section pertaining to the issuance of a three-part check, if a county so chooses, the following provisions may apply:

(1) Once the aforementioned claim procedures have been completed, the treasurer may cause a check to be prepared in payment of claims filed with the county court;

(2) Each claim properly docketed and approved for payment by the county court shall be proper certification from the clerk to the treasurer that a valid claim exists;

(3) The checks shall be prenumbered and so designed that the specific appropriation applicable, particular fund affected, and claim number shall be noted thereon.

History. Acts 1975, No. 22, § 3; 1981, No. 525, § 1; A.S.A. 1947, § 17-827.

14-24-205. Check disbursement record.

(a) If a county should adopt the payment by check system, the county treasurer shall maintain a check disbursement record which shall be a book or file of the duplicate copies of checks issued by the treasurer, arranged in numerical sequence. This book or file shall provide a detailed check-by-check record of the disbursements from the various funds accounts maintained by the treasurer in a fund account book reflecting receipts and disbursements of the various funds.

(b) In lieu of the provisions of this section pertaining to the requirement of the keeping of duplicate copies of the checks, if a county so chooses, the following provisions shall apply:

(1) The treasurer shall maintain a check disbursement record which shall provide a detailed check-by-check record, in numerical sequence, of the disbursements from the various fund accounts so maintained;

(2) For the purposes of this subsection, "check disbursement record" shall be a book or file similar to the warrant register previously maintained by the treasurer by § 14-24-110 [repealed], or, if the county utilizes computer equipment for check preparation, the computer product or check register showing the payee, specific appropriation, fund affected, check number, and claim number, the latter two (2) elements being in their respective numerical sequence;

(3) The treasurer shall deliver to the county clerk a duplicate of the computer product or check register, which product shall be utilized for necessary posting to the claims docket.

History. Acts 1975, No. 22, § 4; 1981, No. 525, § 2; A.S.A. 1947, § 17-828.

14-24-206. Claims against school districts.

(a) It is the intent of this subchapter to allow that all claims duly verified and allowed against the school districts of this state may be handled in accordance with the following procedure:

(1) The ex officio financial secretary of the school district may cause a check to be prepared in payment of claims against the district; the check is to be accompanied by an attached certification from the ex officio financial secretary stating that the check is for payment of a valid claim against the school district properly presented and allowed, as provided by law, the check being presented to the county treasurer for his signature and the check being in triplicate snap-out form, allowing for the following information and distribution:

(A) Original check, after being transmitted to the county treasurer for his signature, will be delivered to the party presenting the claim to the school district;

(B) Duplicate copy of the check, which will provide the printed certification thereon by the ex officio financial secretary to the county treasurer and provide for the original signature of the ex officio financial secretary on said certification, will be maintained by the county treasurer;

(C) Triplicate copy of the check and attached certification which is a part thereof, will be maintained by the school district, with all supporting documentation for such payment being filed with this copy;

(2) The checks shall be prenumbered and designed in such form that the specific appropriation applicable and particular fund affected, out of which the check is to be paid, is noted thereon.

(b) A county may elect to adopt procedures as set forth in §§ 14-24-204 and 14-24-205 and not follow this section, leaving the procedures for payment of just claims against school districts as they exist.

History. Acts 1975, No. 22, §§ 5, 6;
A.S.A. 1947, §§ 17-829, 17-830.

CHAPTER 25

COUNTY ACCOUNTING LAW

SECTION.

- 14-25-101. Title.
- 14-25-102. Bank accounts.
- 14-25-103. Deposit of funds.
- 14-25-104. Prenumbered checks.
- 14-25-105. Petty cash funds.
- 14-25-106. Fixed asset and equipment records.
- 14-25-107. Reconciliation of bank accounts.

SECTION.

- 14-25-108. Prenumbered receipts.
- 14-25-109. County clerk.
- 14-25-110. Fee-basis sheriffs.
- 14-25-111. Fee-basis collectors.
- 14-25-112. Salary-basis sheriffs.
- 14-25-113. Salary-basis collectors.
- 14-25-114. County treasurers.
- 14-25-115. Exemption of officials.

Cross References. Governmental Compliance Act, § 10-4-301 et seq.

Photographic images of checks, § 14-21-108.

14-25-101. Title.

This chapter shall be known and cited as "The Arkansas County Accounting Law of 1973."

History. Acts 1973, No. 173, § 1;
A.S.A. 1947, § 17-1801.

14-25-102. Bank accounts.

All county officials of this state who receive public funds by virtue of their office shall maintain all public funds in depositories approved for such purposes by law. The funds shall be maintained in these depositories in the name of the county office, with the official's name appearing secondarily to the name of the county office.

History. Acts 1973, No. 173, § 2;
A.S.A. 1947, § 17-1802.

14-25-103. Deposit of funds.

(a) All funds received by a county official by virtue of his official position shall be deposited intact to the accounts authorized in § 14-25-102. This section shall apply to all public funds coming into the hands of the official including, but not limited to, the following: fines, fees, taxes, trust funds, federal funds, etc.

(b) Public funds received by one (1) county official and required by law to be transferred to another county official shall be deposited into the account of the first official receiving the funds, and then a check shall be written upon that account to properly transfer the funds.

History. Acts 1973, No. 173, § 3;
A.S.A. 1947, § 17-1803.

14-25-104. Prenumbered checks.

(a) All disbursements of county funds, except as noted in § 14-25-105 which refers to petty cash funds, are to be made by prenumbered checks drawn upon the bank account of that county official.

(b) The checks shall be of the form normally provided by commercial banking institutions and shall contain as a minimum the following information:

- (1) Date of issue;
- (2) Check number;
- (3) Payee;
- (4) Amount both in numerical and written form; and
- (5) Signature of authorized disbursing officer of the county office.

(c) The county official shall maintain printers' certificates as to the numerical sequence of checks printed.

History. Acts 1973, No. 173, § 4;
A.S.A. 1947, § 17-1804.

14-25-105. Petty cash funds.

(a) County officials are permitted to establish petty cash funds, so long as the funds are maintained on the basis set forth in this section.

(b)(1) The establishment of such a fund must be approved by the county quorum court.

(2)(A) In establishing such a fund, a check is to be drawn payable to "petty cash."

(B) That amount may be maintained in the county offices for the handling of small expenditures for items such as light bulbs, delivery fees, etc.

(c)(1) A paid-out slip is to be prepared for each item of expenditure from the fund and signed by the person receiving the moneys.

(2) These paid-out slips shall be maintained with the petty cash.

(d) When the fund becomes depleted, the county official may then draw another check payable to "petty cash" in an amount which equals the total paid-out slips issued, and, at that time, the paid-out slips shall be removed from the petty cash fund and utilized as invoice support for the check replenishing petty cash.

History. Acts 1973, No. 173, § 5;
A.S.A. 1947, § 17-1805.

14-25-106. Fixed asset and equipment records.

- (a)(1)(A) All county officials shall establish and maintain, as a minimum, a listing of all fixed assets and equipment owned by, or under the control of, their office.
- (B) The listing shall contain as a minimum:
- (i) Property item number, if used by the county;
 - (ii) Brief description;
 - (iii) Serial number, if available;
 - (iv) Location of property;
 - (v) Vendor purchased from and the date of acquisition; and
 - (vi) Cost of property.
- (2) In lieu of maintaining such a list, the official may maintain an index card system for accounting for fixed assets and equipment. The index card system must contain the above information for each unit of property owned by, or under the control of, the official.
- (b) Such fixed asset and equipment records shall constitute a part of the general records of the office and, accordingly, shall be made available for utilization by the auditor at the time of audit.

History. Acts 1973, No. 173, § 6;
A.S.A. 1947, § 17-1806.

14-25-107. Reconciliation of bank accounts.

- (a) All county officials maintaining bank accounts as prescribed in § 14-25-102 shall reconcile, on a monthly basis, their cash receipts and cash disbursements journal to the amount on deposit in banks.
- (b) The reconciliations shall take the following form:
- County of
- Date

Amount Per Bank Statement Dated \$.00

ADD: Deposits in transit (Receipts recorded in Cash Receipts Journal not shown on this bank statement).

<u>DATE</u>	<u>RECEIPT NO.</u>	<u>AMOUNT</u>	
		\$.00	
		.00	
		<u>.00</u>	.00

DEDUCT: Outstanding Checks (Checks issued and dated prior to date of bank statement per Cash Disbursements Journal not having yet cleared the bank).

<u>DATE</u>	<u>PAYEE</u>	<u>AMOUNT</u>	
		\$.00	
		.00	
		<u>.00</u>	.00
RECONCILED BALANCE			<u>\$.00</u>

This reconciled balance shall agree to either the cash balance as shown on the official's check stubs running bank balance, or the official's general ledger cash balance, whichever system the official employs.

History. Acts 1973, No. 173, § 7;
A.S.A. 1947, § 17-1807.

14-25-108. Prenumbered receipts.

(a)(1) All items of income, except as noted in subsection (b) of this section, are to be formally receipted by the use of prenumbered receipts or mechanical receipting devices such as cash registers or validating equipment.

(2) In the use of prenumbered receipts the following minimum standards shall be met:

(A) Receipts are to be prenumbered by the printer, and a printer's certificate obtained and retained for audit purposes. The certificate shall state the date printing was done, the numerical sequence of receipts printed, and the name of the printer;

(B) The prenumbered receipts shall contain the following information for each item receipted:

(i) Date;

(ii) Amount of receipt;

(iii) Name of person or company from whom money was received;

(iv) Purpose of payment;

(v) Fund to which receipt is to be credited;

(vi) Signature of employee receiving money;

(C) The original receipt should be given to the party making payment. One (1) duplicate copy of the receipt shall be maintained in numerical order in the receipt book and made available to the auditors during the course of annual audit. Additional copies of the receipt are optional with the county office and may be used for any purposes it deems fit.

(3) The use of mechanical receipting devices, which accomplish the same purpose as prenumbered receipts, is acceptable and is encouraged where such equipment is utilized.

(b) This section shall not apply to the county collector's office in regard to the collection of property taxes. However, this section shall apply to the collector's office for receipting of all other moneys.

History. Acts 1973, No. 173, §§ 8, 9;
A.S.A. 1947, §§ 17-1808, 17-1809.

14-25-109. County clerk.

(a)(1) The county clerk shall maintain all bank accounts and records of accounts as prescribed by law in reference to the duties of his office. In addition, the clerk shall maintain separate records and separate bank accounts for fee accounts and for accounts pertaining to the court.

(2) The bank accounts shall be maintained as prescribed in § 14-25-102, and the provisions of §§ 14-25-103, 14-25-104, 14-25-107, and 14-25-108(a) shall apply to the accounts.

(b)(1) Checks written shall be recorded in a check disbursement record which shall consist of columnar paper providing columns for the appropriate classification of the expense.

(2) The number of columns and appropriate columnar headings shall be optional with the clerk, if sufficient classification of expenditures will be maintained.

(c) Receipts shall be recorded in a receipts journal which shall consist of columnar paper and shall provide for:

(1) The date of the receipt;

(2) Identification of payor;

(3) Receipt number;

(4) Total amount received; and

(5) Additional columns for classification of receipts as either trust, agency, or other.

(d)(1) For each trust and agency account, the clerk shall establish a record showing beginning balance, receipts, disbursements, and ending balance.

(2) All transactions affecting trust accounts shall be posted on the appropriate individual trust record, in addition to being posted on the check disbursement record, or cash receipts records as prescribed above.

(3)(A) Monthly, the clerk shall reconcile these individual detail trust and agency records to the bank balance of trust account.

(B) Copies of such reconciliations shall be maintained and made a part of the records of the office.

History. Acts 1973, No. 173, § 10; money held by circuit, chancery clerks — A.S.A. 1947, § 17-1810. Disposition of funds, § 16-20-108.

Cross References. Investment of

14-25-110. Fee-basis sheriffs.

(a) **MINIMUM REQUIREMENTS.** County sheriffs in fee system counties, in addition to following the procedures and requirements of §§ 14-25-101 — 14-25-108, shall maintain as a minimum a cash receipts journal and cash disbursements journal in the form as set forth in subsections (b) and (c) of this section.

(b) **CASH RECEIPTS JOURNAL.** The cash receipts journal shall be a book of columnar paper, which may be of either the sewed binding or of the post binder type and shall provide sufficient columns for the recording of the following information:

(1) Date;

(2) Payor;

(3) Receipt number;

(4) Total cash receipt;

(5) Indication of court of jurisdiction, if applicable;

FOR CLASSIFICATION OF REVENUES COLLECTED FOR OTHER AGENCIES:

- (6) Fines;
- (7) Prosecuting attorney fees;
- (8) Arkansas State Police;
- (9) Law Library;
- (10) Justice Building;
- (11) Municipal court fee;
- (12) Arkansas Transportation Commission fines;
- (13) Jury and stenographer fees;
- (14) Breathalyzer test;
- (15) Other miscellaneous revenues;
- (16) Overweight fines;

FOR CLASSIFICATION OF FINES AND COMMISSIONS EARNED:

- (17) Commission of fines;
- (18) Commission on overweight penalties;
- (19) Jail fees, prisoner feed;
- (20) Service, separated by court;
- (21) Mileage, separated by court;
- (22) Out-of-state mileage earned;
- (23) State institutional mileage earned;
- (24) Land sale fees;
- (25) Car expenses allowed by quorum court and state acts;
- (26) Court attendance fees.

(c) **CASH DISBURSEMENTS JOURNAL.** The cash disbursements journal shall be a book of columnar paper, which may be of either the sewed binding or of the post binder type and shall provide sufficient columns for the recording of the following information:

- (1) Date;
- (2) Payee;
- (3) Check number;
- (4) Total amount of check;
- (5) Indication of court of jurisdiction, if applicable;

FOR THE RECORDING AND CLASSIFICATION OF FEES PAID TO OTHER AGENCIES:

- (6) Paid to counties;
- (7) Paid to cities;
- (8) Paid to other;
- (9) Identify other fees paid;

FOR THE RECORDING AND CLASSIFICATION OF OPERATING EXPENSES:

- (10) Salaries or extra help;
- (11) Special deputies;
- (12) Private car mileage;
- (13) Automobile depreciation allowed by quorum court;
- (14) Jail allowances;
- (15) Out-of-state travel;
- (16) State institutional travel;
- (17) Other expenses;
- (18) Explanation of other expenses.

(d) **BOOKS AND RECORDS.** The sheriff shall be required to maintain such books and records as prescribed by this chapter and shall keep all books

and records posted on a current basis, making an entry into the receipt journal for all items of cash receipts and an entry into the disbursements journal for each disbursement made.

History. Acts 1973, No. 173, § 11;
A.S.A. 1947, § 17-1811.

14-25-111. Fee-basis collectors.

(a) County collectors in fee system counties, in addition to following the procedures and requirements of §§ 14-25-101 — 14-25-108, shall establish and maintain a system of bookkeeping which will meet the minimum requirements set forth in this section.

(b) For the collectors' tax records and receipts, the collectors shall maintain a separate bank account and a separate cash receipts and disbursements journal. The cash receipts and disbursements journal shall consist of a book of columnar paper, which may be of either the sewed binding type or the post binder type. In any event, the book shall provide adequate columns for the recording of the following information:

CASH RECEIPTS AND DISBURSEMENTS JOURNAL DETAIL — TAX RECORDS.

Set up columns in the journal as follows:

- (1) Date;
- (2) Explanation, inclusive receipt numbers collected or payee's name;
- (3) Check number;
- (4) & (5) Cash receipts — In & out;
- (6) & (7) Bank account — In & out;

REVENUE SECTION:

- (8) Taxes collected;
- (9) Penalties collected;
- (10) Costs collected;

DISBURSEMENT SECTION:

- (11) Paid to county;
- (12) Paid to cities;
- (13) Collectors' commissions paid;
- (14) Delinquent personal fees paid.

(c) For the collectors' commission accounts, the collectors shall maintain a separate bank account and a separate cash receipts and disbursements journal. The cash receipts and disbursements journal shall consist of a book of columnar paper, which may be of either the sewed binding type or the post binder type. In any event, the book shall provide adequate columns for the recording of the following information:

CASH RECEIPTS AND DISBURSEMENTS JOURNAL DETAIL — COMMISSION ACCOUNT.

Set up columns in the journal as follows:

- (1) Date;
- (2) Explanation — Name of payee;
- (3) Check number;
- (4) & (5) Cash receipts — In & out;

(6) & (7) Bank account — In & out;

REVENUE SECTION:

(8) Collectors' commissions;

DISBURSEMENT SECTION:

(9) Salaries or extra help;

(10) Social security taxes;

(11) Retirement;

(12) Hospital insurance;

(13) Collectors' bond;

(14) Telephone;

(15) Office supplies;

(16) Other expenses which may be detailed.

(d) The collector shall be required to maintain such books and records as prescribed by this chapter and shall keep all books and records posted on a current basis making an entry into the receipts journal for all items of cash receipts and an entry into the disbursements journal for each disbursement made.

History. Acts 1973, No. 173, § 12;
A.S.A. 1947, § 17-1812.

14-25-112. Salary-basis sheriffs.

(a) County sheriffs in salary-basis counties, in addition to following the procedures and requirements of §§ 14-25-101 — 14-25-108, shall establish and maintain a cash receipts and disbursements journal which shall consist of a book of columnar paper, which may be of either the sewed binding or the post binder type, and shall provide sufficient columns for the recording of the following information:

CASH RECEIPTS AND DISBURSEMENTS JOURNAL DETAIL:

Set up columns in the journal as follows:

(1) Date;

(2) Explanation — Payee or payor's name;

(3) Check number or receipt number;

(4) & (5) Cash receipts — In & out;

(6) & (7) Bank account — In & out;

REVENUE SECTION:

(8) Fines collected;

(9) Prosecuting attorney fees;

(10) Arkansas State Police;

(11) Law Library;

(12) Municipal court fees;

(13) Justice Building;

(14) Arkansas Transportation Commission fines;

(15) Breathalyzer tests;

(16) Service — Separated by courts;

(17) Service and mileage received;

(18) Sheriffs' fees received;

(19) Other miscellaneous revenue;

DISBURSEMENT SECTION:

(20) Paid to county;

(21) Paid to cities.

(b) The sheriff shall be required to maintain such books and records as prescribed by this chapter and shall keep all books and records posted on a current basis, making an entry into the receipts journal for all items of cash receipts and an entry into the disbursements journal for each disbursement made.

History. Acts 1973, No. 173, § 13;
A.S.A. 1947, § 17-1813.

14-25-113. Salary-basis collectors.

(a) County collectors in salary-basis counties, in addition to following the procedures and requirements of §§ 14-25-101 — 14-25-108, shall establish and maintain a system of bookkeeping which will meet the minimum requirements of a cash receipts and disbursements journal for the recording and disbursing of tax collections, which shall consist of a book of columnar paper, which may be of either the sewed binding type or the post binder type and shall provide columns for the recording of the following information:

CASH RECEIPTS AND DISBURSEMENTS JOURNAL DETAIL:

Set up columns in the journal as follows:

(1) Date;

(2) Explanation — Inclusive receipt numbers collected or payee's name;

(3) Check number;

(4) & (5) Cash receipts — In & out;

(6) & (7) Bank Account — In & out;

REVENUE SECTION:

(8) Taxes collected;

(9) Penalties collected;

(10) Costs collected;

DISBURSEMENT SECTION:

(11) Paid to county;

(12) Paid to cities;

(13) Paid to improvement districts.

(b) The collector shall be required to maintain such books and records as prescribed by this chapter and shall keep all books and records posted on a current basis, making an entry into the receipts journal for all items of cash receipts and an entry into the disbursements journal for each disbursement made.

History. Acts 1973, No. 173, § 14;
A.S.A. 1947, § 17-1814.

14-25-114. County treasurers.

(a)(1) The county treasurer shall receive and receipt for all moneys payable to the county treasury and pay and disburse them on warrants drawn by order of the county court.

(2) The treasurer shall keep a true and accurate account of all moneys received and disbursed and a true and accurate record of all warrants paid by him.

(3) The treasurer shall maintain and issue prenumbered receipts for all moneys paid into the treasury in accordance with § 14-25-108.

(b) The treasurer shall establish and maintain the following accounting practices, in relation to the operations of the office:

(1) The number and date of checks paying warrants where the county is using a system of paying several warrants presented by the bank should be identified with the warrants in posting to the treasurer's book;

(2) The check number and its date shall be entered on the warrant, and the warrant number and its date shall be entered on the face of the check and on the check stub, as well as the account represented;

(3) Postings to the treasurer's book of warrants and checks shall be under the transaction date on the instruments, not the date the items are entered in the books;

(4) Banks should be requested to present all warrants held at the end of the month promptly so that they may be included in the treasurer's book in the month to which they pertain;

(5) All funds in the treasurer's book shall be reconciled with the bank monthly. The reconciliation should, preferably, be from the bank statement to the books, since the book balance is what the treasurer is trying to prove. Reconciliations shall be retained and filed with the bank statements;

(6) Clear reference shall be made in the treasurer's book as to the origins of all moneys. This may be by notation in the book citing the origin, date, receipt number, and other pertinent information;

(7) Transfers shall clearly state the fund to which the moneys are being transferred, and the recipient fund should state the origin of its receipt. Explanations on the treasurer's book as to the reason for the transfer will be most helpful;

(8) A brief explanation of the computation of the treasurer's commission to provide a clear and permanent record of how the commission was determined shall be maintained;

(9) Corrections to the treasurer's book should be entered at the time of discovery and under the date of the entry into the treasurer's records. A notation should be made at the erroneous balance if it is at a previous date, but under no circumstances should a previous month's balance be changed when it has been brought forward into the succeeding period;

(10) Receipts shall be prepared for all moneys received, but shall never be used to effect any other type of accounting transaction. Bank deposits should be intact, and prompt, and identified as to type of receipts;

(11) Copies of all receipts are to be retained. All copies of voided receipts should be retained and attached together;

(12) Printers' certificates shall be obtained and kept for each printing order of formally prenumbered receipts;

(13) All balances on the treasurer's book not belonging to the county and awaiting clearance should be remitted on or before December 31, or promptly thereafter, as of December 31. Generally, these are moneys belonging to agencies of the state.

History. Acts 1973, No. 173, § 15;
A.S.A. 1947, § 17-1815.

14-25-115. Exemption of officials.

(a) In the event any county official feels his system of bookkeeping is such that it equals or exceeds the basic system prescribed by this chapter, the official may request a review by the Legislative Joint Auditing Committee.

(b) Upon the committee's concurrence with such facts, the committee may issue a certificate to the official stating that the official's accounting system is of a degree of sophistication such that the basic requirements of this chapter are being met and exempting the official from the requirements of the particulars of the system prescribed by this chapter.

History. Acts 1973, No. 173, § 16;
A.S.A. 1947, § 17-1816.

CHAPTER 26

WORKERS' COMPENSATION

SECTION.

14-26-101. Requirement generally.

14-26-102. Date of coverage.

14-26-103. Responsibility for providing coverage.

SECTION.

14-26-104. Coverage through private carrier or self-funding.

Publisher's Notes. Acts 1985, No. 886, as amended, is also codified as § 14-60-101 et seq.

Cross References. Volunteer public safety workers, workers' compensation, § 14-28-101 et seq.

Effective Dates. Acts 1985 (1st Ex. Sess.), No. 43, § 2: July 11, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 866 of 1985 mandated that municipalities and counties provide Worker's Compensation coverage for their employees, with such coverage to be provided through private carriers or through one or

more self-funding groups on a statewide basis; that such Act is in need of clarification with respect to the self-funding groups established on a statewide basis to authorize the formation of one or more self-funding groups of municipalities, or counties, or for both municipalities and counties, so long as safeguards are provided whereby any municipality or county shall have a right to participate in such group, if application is made for coverage thereunder; and that the immediate passage of this Act is necessary to make said clarification and to assure competition in the providing of Worker's Compensation

coverage for employees of municipalities and counties in this State. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 206, § 3: Mar. 13, 1987. Emergency clause provided: "Whereas, it is difficult, if not impossible, to buy adequate excess reinsurance in the commercial insurance market without paying an exorbitant price; and, Whereas, this Act will more than adequately insure that Workers' Compensation claims of municipal and county employees will be paid in a timely fashion and will save municipal and county governments thousands of dollars which can be used to provide better municipal and county services. Now, therefore, an emergency is hereby de-

clared to exist and this Act being necessary to protect the public peace, health and safety shall take effect immediately on its passage and approval."

Acts 1993, No. 901, § 52: Apr. 6, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws addressed in this omnibus Act on workers' compensation benefits and insurance licensure and other insurance regulatory issues are inadequate for the protection of the Arkansas public and immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this omnibus Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

UALR L.J. Legislative Survey, Workers' Compensation, 8 UALR L.J. 617.

14-26-101. Requirement generally.

(a) All counties shall be required to provide workers' compensation coverage for their officials, employees, and municipal volunteer fire fighters.

(b) Coverages shall be provided for losses incurred while performing work for the county.

(c) Individuals convicted of a criminal offense and committed to a county detention facility or state correctional facility who are required to perform work for the county shall not be considered employees of the county.

History. Acts 1985, No. 866, § 1; A.S.A. 1947, § 81-1364; Acts 1993, No. 901, § 2.

Amendments. The 1993 amendment added (c).

CASE NOTES

Applicability.

A constable is an official of the county and thus covered by workers' compensation. *Farnsworth v. White County*, 39 Ark. App. 98, 839 S.W.2d 229 (1992), aff'd, 312 Ark. 574, 851 S.W.2d 451 (1993).

Where plaintiff was acting as constable when he sustained a gunshot wound to his abdomen, the county was required to furnish workers' compensation. *Farnsworth v. White County*, 312 Ark. 574, 851 S.W.2d 451 (1993).

14-26-102. Date of coverage.

(a) This chapter shall be effective July 1, 1985.

(b)(1) Claims incurred prior to July 1, 1985, shall continue to be the responsibility of the state.

(2) Claims incurred on and after July 1, 1985, shall be the responsibility of the counties.

History. Acts 1985, No. 866, § 3;
A.S.A. 1947, § 81-1366.

14-26-103. Responsibility for providing coverage.

(a) County quorum courts shall be responsible for providing the workers' compensation coverage required by this chapter.

(b) Each county quorum court is authorized to require reimbursement of its general fund on a pro rata basis from the budgets of its various county departments and agencies for whom the workers' compensation coverage is provided.

(c) Failure of a county to provide the workers' compensation coverage as required in this chapter shall result in the loss of the county's general revenues turn-back from the State of Arkansas for the period for which workers' compensation coverage is not provided.

History. Acts 1985, No. 866, § 4;
A.S.A. 1947, § 81-1367.

14-26-104. Coverage through private carrier or self-funding.

(a) Counties may provide workers' compensation coverage either through private carriers or through one (1) or more self-funding groups.

(b) Self-funding groups established for this purpose shall meet the following requirements:

(1) Any such group established to provide such coverage to counties only shall offer coverage to any county in the state that applies for such coverage;

(2) Any such group established to provide coverage for both municipalities and counties shall offer coverage to any municipality or county in the state desiring to participate therein;

(3) Any group established to provide workers' compensation coverage to counties or to counties and municipalities shall offer such coverage at rates as established and filed with the Workers' Compensation Commission by the organization establishing the self-funding group, and rates for counties participating in any such group shall be revised annually based on the cost experience of the particular county, or group of counties, or group of municipalities and counties; and

(4)(A) Any self-funding group of participating municipalities or counties which is governed by a board of trustees of elected municipal or county officials shall be subject to the regulations of the Workers' Compensation Commission applicable to self-insured groups or pro-

viders. However, cities and counties shall not be required to enter into an indemnity agreement binding them jointly and severally.

(i) Each board governing a self-funded group shall be permitted to declare dividends or give credits against renewal premiums based on annual loss experience.

(ii) All self-funded groups shall obtain excess reinsurance from an admitted or approved insurance company doing business in Arkansas.

(B) However, in lieu of the reinsurance requirements in subdivision (b)(4)(A), any self-funded group under this section with one million five hundred thousand dollars (\$1,500,000) or more in annually collected premiums may provide excess reserves of twenty percent (20%) of annual premiums by any one of the following ways:

(i) Cash or certificates of deposit in Arkansas banks;

(ii) Letters of credit from an Arkansas bank; or

(iii) Purchase of reinsurance from the National League of Cities' Reinsurance Company.

History. Acts 1985, No. 866, § 2; 1985 Sess., No. 43, § 1; A.S.A. 1947, § 81-1365; Acts 1987, No. 206, § 1.

CHAPTER 27

COUNTY INTERGOVERNMENTAL COOPERATION COUNCILS

SECTION.

14-27-101. Purpose.

14-27-102. Creation — Membership, etc.

14-27-103. Meetings — Notice.

SECTION.

14-27-104. Annual review of services.

14-27-105. Annual report to General Assembly.

Effective Dates. Acts 1997, No. 385, § 9: Mar. 6, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the original ten subject matter joint interim committees of the General Assembly and in their place established House interim committees and Senate interim committees; that as a result, various sections of the Arkansas Code that refer to the joint interim committees should now refer to the House and Senate interim committees; that this act so provides; and that this act should go into effect as soon

as possible in order to make those sections of the Arkansas Code compatible. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

14-27-101. Purpose.

(a) It is the purpose of this chapter to require the executives of all political subdivisions of each county to meet on a regular basis for the purpose of encouraging cooperation by the various local government jurisdictions within each county in the most efficient use of their mutual resources and in the providing of services to their local communities in the most efficient and mutually advantageous manner possible.

(b) It is expected that regular dialogue between the executives of the various local government subdivisions within each county will encourage these governmental units to:

(1) Share facilities, equipment, employees, and services to provide each with a mutual benefit to the advantage of all governments within the county;

(2) Explore the use of joint purchasing and buying agreements to purchase goods and services in an effort to achieve economies of scale that would not be possible without mutual cooperation; and

(3) Identify the areas of duplication of services so they may be eliminated to the maximum extent possible.

History. Acts 1987, No. 510, § 1.

14-27-102. Creation — Membership, etc.

(a) There is established within each county of this state a county intergovernmental cooperation council to facilitate cooperation among all the local government subdivisions of each county, to encourage the efficient use of local government resources, and to eliminate the duplication of services by local governments.

(b) The membership of each cooperation council shall consist of the county judge, the county clerk, and the mayor of each city and incorporated town within each county.

(1)(A) The county judge of each county shall serve as chairman of the cooperation council.

(B) The county judge shall have full voting power and shall have veto power over any action taken by the council.

(C) It shall require a two-thirds ($\frac{2}{3}$) majority vote of all council members to override a veto.

(2) The county clerk of each county shall serve as the secretary of the cooperation council, shall preside over cooperation council meetings in the absence of the council chairman, and shall be responsible for writing and submitting all reports of the cooperation council.

(c) Each member of the council shall have one (1) vote for the local government jurisdiction he represents on the cooperation council.

(d) The members of the cooperation council shall serve without compensation for their services.

(e) A quorum shall consist of a majority of the council's membership and shall be necessary to conduct its business.

History. Acts 1987, No. 510, § 2; 1993, No. 776, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out as amended by Acts 1993, No. 776, § 1. This section was also amended by Acts 1993, No. 232, § 2 to read as follows:

“(a) There is established within each county of this state a county intergovernmental cooperation council to facilitate cooperation among all the local government subdivisions of each county, to encourage the efficient use of local government resources, and to eliminate the duplication of services by local governments.

“(b) The membership of each cooperation council shall consist of the county judge, the county clerk, and the mayor of each city and incorporated town within each county.

“(1) The county judge of each county shall serve as chairman and preside over the cooperation council with a vote and with the power of veto.

“It shall require a two-thirds ($\frac{2}{3}$'s) majority of all council members to override a veto.

“All other members of the council shall have one (1) vote for the local government jurisdiction they represent on the cooperation council.

“(2) The county clerk of each county shall serve as the secretary of the cooperation council, shall preside over coopera-

tion council meetings in the absence of the council chairman, and shall be responsible for writing and submitting all reports of the cooperation council.

“(c) The members of the cooperation council shall serve without compensation for their services.

“(d) A quorum shall consist of a majority of the council's membership and shall be necessary to conduct its business.”

Publisher's Notes. Acts 1993, No. 232, § 1, provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the method of voting as outlined in Act 510 of 1987, which established the County Intergovernmental Cooperation Council is heavily weighted in favor of cities and incorporated towns and due to this inequity has left the rural, unincorporated areas of the several counties of Arkansas in danger of under representation. It is further found and determined that it is the public policy of the state to provide full and equal representation to all of its citizens at all levels and in all subdivisions of government and that the provisions of this act are necessary for the furtherance of the goal of fair and equal representation.”

Amendments. The 1993 amendment inserted (b)(1)(B) and (b)(1)(C); and, in (c), substituted “he represents” for “they represent” and deleted “except the chairman who shall vote only in the case of a tie vote” at the end.

14-27-103. Meetings — Notice.

(a) Each county intergovernmental cooperation council shall meet a minimum of four (4) times annually, at least one (1) time during each calendar year quarter, in the county seat or seats, to discuss ways of eliminating the duplication of services at the local government level.

(b) All meetings of the cooperation council shall be open to the public and shall be held in a public meeting room.

(c) All meetings of the cooperation council shall be at the call of the chairman unless a majority of the council's membership shall petition for a meeting to be held.

(d) The secretary of each cooperation council shall notify the public and the press of council meetings no later than ten (10) days prior to the date of such meetings.

History. Acts 1987, No. 510, § 3.

14-27-104. Annual review of services.

(a) At least one (1) time annually, the county intergovernmental cooperation council shall review the delivery of services by the various local government subdivisions within the county in the following areas:

- (1) Law enforcement services;
- (2) Fire protection services;
- (3) Jail facilities and correctional services;
- (4) Ambulance and emergency medical services;
- (5) Library services;
- (6) Motor vehicle liability insurance;
- (7) Workers' compensation coverage;
- (8) Solid waste management services;
- (9) Street, road, and highway repair and construction;
- (10) Parks and recreation facilities and services;
- (11) Planning and zoning services;
- (12) Health and sanitation services;
- (13) Public transit and transportation services; and
- (14) Any other service area of local government.

(b)(1) The annual review of various services can occur at any or all meetings of the council during the year.

(2) Each service area shall be examined to determine whether or not the employees, equipment, or facilities of service areas could be shared to reduce cost or eliminated to avoid the duplication of services and whether or not the goods and services purchased individually in each of these areas could be purchased jointly or cooperatively to reduce the unit cost to all local governments within the county.

(3) If it is determined by the cooperation council that duplicative services exist and can be eliminated or that joint purchases could be made at reduced costs, this determination shall be reported to the governing body of the local government jurisdictions involved along with any recommendations for consolidation of services or purchases.

History. Acts 1987, No. 510, § 4.

14-27-105. Annual report to General Assembly.

(a) By January 31 of the year following the close of each calendar year's deliberations by the council, the secretary of the cooperation council in each county shall prepare a report of the determinations and recommendations, if any, of the council in each of the required service areas of review.

(b) Each county's report shall be compiled by the secretary and forwarded to the House and Senate Interim Committees on City, County and Local Affairs for their consideration.

(c) This annual report must be received by the committees no later than April 1 of each year.

History. Acts 1987, No. 510, § 5; 1997, No. 385, § 1.

Amendments. The 1997 amendment substituted "House and Senate Interim

Committees on City, County and Local Affairs" for "Joint Interim Committee on City, County, and Local Affairs of the Ar-

kansas General Assembly" and made a related change in (b); and substituted "committees" for "committee" in (c).

CHAPTER 28

VOLUNTEER PUBLIC SAFETY WORKERS

SECTION.

14-28-101. Definitions.

14-28-102. Workers' compensation coverage generally.

SECTION.

14-28-103. Terms of coverage.

Cross References. Workers' compensation for county employees, § 14-26-101 et seq.

14-28-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Volunteer public safety organization" means:

(A) A county organization for emergency services formed pursuant to the Arkansas Emergency Services Act, § 12-75-101 et seq.;

(B) A sheriff's auxiliary formed pursuant to § 12-9-301 et seq.;

(C) An ambulance service or rescue squad formed pursuant to § 14-282-101 et seq. or any other improvement district law of this state or formed as a subordinate service district of the county; or

(D) A rural volunteer fire department formed as a subordinate service district of the county or as an improvement district, or a subscription fire service department formed as a nonprofit organization under the laws of this state.

(2) "Volunteer public safety worker" means an active volunteer member of a volunteer public safety organization.

History. Acts 1987, No. 527, § 1.

14-28-102. Workers' compensation coverage generally.

(a) The county governments of this state are authorized to provide workers' compensation coverage pursuant to this chapter for personal injury, disability, or death of volunteer public safety workers while actually engaged in performing volunteer public safety duties.

(b) Any volunteer public safety organization desiring workers' compensation coverage for volunteer public safety workers of the organization may petition the quorum court of the county served by the organization for workers' compensation coverage under this chapter. By majority vote, the quorum court may elect to include the volunteer public safety workers as county employees for the sole purpose of workers' compensation coverage under the provisions of this chapter and §§ 14-60-101 — 14-60-104 and subject to the limitations of this

chapter. The action by the quorum court shall not entitle the volunteer public safety workers to any benefits from the county other than workers' compensation coverage.

(c) At its discretion, the quorum court may require as a condition for coverage that a volunteer public safety organization requesting worker's compensation coverage under this chapter pay the premium for that coverage from any public funds available to the organization or that the quorum court make a deduction in the amount of the cost of the coverage from any amounts which the county would normally provide to the volunteer public safety organization.

(d) Volunteer public safety workers covered by workers' compensation pursuant to this chapter shall be deemed to have received such wages as will qualify them for minimum benefits applicable with respect to injury, disability, or death.

History. Acts 1987, No. 527, § 2.

14-28-103. Terms of coverage.

Any insurer or other entity providing workers' compensation coverage to a county shall offer coverage for volunteer public safety workers on the same terms as for county employees.

History. Acts 1987, No. 527, § 3.

CHAPTERS 29-35

[Reserved]

SUBTITLE 3. MUNICIPAL GOVERNMENT

CHAPTER 36

GENERAL PROVISIONS

[Reserved]

CHAPTER 37

CLASSIFICATION OF CITIES AND TOWNS

SECTION.

- 14-37-101. Applicability.
- 14-37-102. Division into classes.
- 14-37-103. Population limits.
- 14-37-104. Cities of the first class.
- 14-37-105. Cities of the second class.
- 14-37-106. Board of Municipal Corporations.
- 14-37-107. Advancement of cities and

SECTION.

- towns according to census.
- 14-37-108. Application for advancement between census periods.
- 14-37-109. Appointment of enumerators to take census.
- 14-37-110. Returns of enumerators.
- 14-37-111. Reduction of city to lower grade — In general.

SECTION.

14-37-112. Incorporated town may become city of the second class.

14-37-113. Effect of population changes on legislation.

SECTION.

14-37-114. Reduction of city of the first class to city of the second class.

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

Acts 1893, No. 145, § 6: effective on passage.

Acts 1903, No. 46, § 4: effective on passage.

Acts 1909, No. 306, § 2: effective on passage.

Acts 1931, No. 61, § 3: effective on passage.

Acts 1931, No. 119, § 2: approved Mar. 9, 1931. Emergency clause provided: "By reason of the fact that many towns in the State with more than seventeen hundred and fifty inhabitants wish to undertake public improvements that are not practicable under improvement district laws, an emergency is declared to exist, and that for the immediate preservation of the public peace, health and safety it is necessary that this act shall take effect and be in force immediately upon its passage, and thereupon the same shall be in force immediately upon passage."

Acts 1939, No. 92, § 3: approved Feb. 15, 1939. Emergency clause provided: "Whereas, there are cities and towns as described herein which are losing revenue, and because there are people living outside of said cities and towns which are deprived of the privilege of police protection, and this act will provide additional revenue for said cities and will provide said people with adequate police protection, this act is found necessary for the public peace, health and safety, and an emergency is hereby declared to exist, and this act shall be in full force and effect from and after its passage."

Acts 1939, No. 211, § 2: approved Mar. 9, 1939. Emergency clause provided: "It is ascertained and hereby declared that by reason of the depression continuing there are several incorporated towns in the State of Arkansas, that are now handicapped by not being able to become cities of the second class so that this act is necessary for the preservation of the public peace, health and safety. Therefore an emergency is declared to exist and this act

shall be in full force and effect from and after its passage."

Acts 1943, No. 160, § 2: Mar. 4, 1943.

Acts 1945, No. 247, § 6: Mar. 20, 1945.

Emergency clause provided: "It is ascertained and declared by the General Assembly of the State of Arkansas, that it would be advantageous to many cities not having four thousand or more inhabitants to become cities of the first class, since the Statutes of Arkansas give the cities of the first class greater rights than the cities of the second class; an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1947, No. 227, § 3: approved Mar. 18, 1947. Emergency clause provided: "It is ascertained and declared that there are a large number of towns in the State of Arkansas which have raised their classifications under the provisions of Act No. 334 of the Acts of the General Assembly of 1937, and under the provisions of Act No. 334 of the General Assembly of 1937 as amended by Act 211 of the Acts of the General Assembly of 1939 and their operations and advantages as cities of the second class are being delayed by reason of the present law so that this Act is necessary for the preservation of the public peace, health and safety. Therefore an emergency is declared to exist and this Act shall be in full force and effect from and after its passage."

Acts 1967, No. 498, § 3: Apr. 4, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that various laws of this State have been enacted applicable to cities of this State within defined population classifications, but that subsequent thereto many of the cities to which said laws are applicable have either increased or decreased their population to an extent that such laws are no longer applicable to such cities, and that the immediate passage of this Act is necessary in order that the laws

formerly applicable to said cities may continue to be applicable thereto. Therefore, an emergency is hereby declared to exist and this Act being necessary for the im-

mediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., §§ 1 et seq., 105 et seq.

Ark. L. Rev. Municipal Improvement Bonds in Arkansas, 8 Ark. L. Rev. 146.

UALR L.J. Goldner, A Call for Reform of Arkansas Municipal Law, 15 UALR L.J. 175.

14-37-101. Applicability.

All corporations which existed when the Arkansas Constitution of 1874 took effect for the purpose of municipal government, and described or denominated in any law then in force, are organized into cities of the first and second class, as the case may be, and incorporated towns with the territorial limits respectively prescribed or belonging.

History. Acts 1875, No. 1, § 5, p. 1; C. & M. Dig., § 7456; Pope's Dig., § 9489; A.S.A. 1947, § 19-203.

Publisher's Notes. The Arkansas Con-

stitution of 1874 was ratified by the people October 13, 1874, and its adoption was proclaimed October 30, 1874.

CASE NOTES

Boundaries.

When a municipal corporation has definite boundaries that are in dispute, it is

for the courts, and not the General Assembly, to determine their location. *State v. Leatherman*, 38 Ark. 81 (1881).

14-37-102. Division into classes.

In respect to the exercise of certain corporate powers and to the number, character, powers, and duties of certain officers, municipal corporations are divided into the following classes:

- (1) Cities of the first class;
- (2) Cities of the second class; and
- (3) Incorporated towns.

History. Acts 1875, No. 1, § 1, p. 1; C. & M. Dig., § 7448; Pope's Dig., § 9480; A.S.A. 1947, § 19-201.

14-37-103. Population limits.

(a)(1) All municipal corporations having over two thousand five hundred (2,500) inhabitants shall be deemed cities of the first class.

(2) All cities having five hundred (500) inhabitants or more and fewer than two thousand five hundred (2,500) inhabitants shall be deemed cities of the second class.

(3) All others shall be incorporated towns and shall be governed by the provisions of this subtitle.

(b)(1) Any incorporated towns of fewer than five hundred (500) inhabitants who have voted to be a city of the second class under § 14-37-112 shall continue to be a city of the second class.

(2) Any city having a population of one thousand five hundred (1,500) or more may, upon the enactment of an ordinance therefor, become a city of the first class, with all powers, authority, and responsibility of other cities of the first class.

History. Acts 1875, No. 1, § 5, p. 1; C. & M. Dig., § 7457; Pope's Dig., § 9490; Acts 1945, No. 247, § 4; 1965, No. 108, § 1; 1971, No. 269, § 1; A.S.A. 1947, § 19-202.

Publisher's Notes. Acts 1945, No. 247, § 5, provided that this act shall be cumulative to §§ 14-37-105(b) and 14-37-112 and shall not affect the provisions of these sections.

14-37-104. Cities of the first class.

(a) All cities, which at the last federal census had, or now have, a population exceeding two thousand five hundred (2,500) inhabitants shall be deemed cities of the first class.

(b) All cities which, at any future federal census, or any census which may be taken in pursuance of the laws of this state, shall be found to have a population of two thousand five hundred (2,500) inhabitants shall thereafter be deemed cities of the first class.

History. Acts 1875, No. 1, § 2, p. 1; C. & M. Dig., §§ 7449, 7450; Pope's Dig.,

§§ 9481, 9482; Acts 1945, No. 247, §§ 1, 2; A.S.A. 1947, §§ 19-204, 19-205.

CASE NOTES

Paris.

The municipality of Paris, Arkansas, is a city of the first class as the 1990 census reports a population of approximately three thousand six hundred (3,600) inhab-

itants. *Pearson v. City of Paris*, 839 F. Supp. 645 (W.D. Ark. 1993).

Cited: *City of Cabot v. Thompson*, 286 Ark. 395, 692 S.W.2d 235 (1985).

14-37-105. Cities of the second class.

(a) Any incorporated town of the State of Arkansas which, at any future federal census, or any census taken under the authority of the State of Arkansas, shall be found to have a population exceeding five hundred (500) persons who shall be inhabitants of the town and less than two thousand five hundred (2,500) inhabitants shall be deemed in all respects to be a city of the second class. However, this section shall not apply to cities that are now classified as cities of the first class.

(b)(1) In all counties having two (2) levying courts, in which there is a county seat town of less than five hundred (500) population, according to the last federal census, the county seat towns are made cities of the second class, with all the powers and privileges conferred upon cities of the second class by law.

(2) Any of the towns described in subdivision (b)(1) of this section, through the governing body thereof, shall have the power, by ordinance, to annex to the city or town all heretofore platted additions thereto, so

as to make them a part of the city and included within its boundaries and subject to all the rights, duties, and privileges of the original territory of the city.

History. Acts 1875, No. 1, § 2, p. 1; Dig., § 9483; Acts 1939, No. 92, §§ 1, 2; 1909, No. 306, § 1, p. 915; C. & M. Dig., 1945, No. 247, § 3; A.S.A. 1947, §§ 19-§ 7451, Acts 1931, No. 119, § 1; Pope's 206, 19-207.

14-37-106. Board of Municipal Corporations.

The Board of Municipal Corporations shall consist of the State Auditor, Secretary of State, and Attorney General. The Secretary of State shall be president.

History. Acts 1893, No. 145, § 2, p. 251; C. & M. Dig., § 7454; Pope's Dig., § 9487; A.S.A. 1947, § 19-208.

CASE NOTES

Facilities Boards.

Facilities boards are not the type of company, association or corporation contemplated by this section; rather, facilities

boards are agencies created by the counties to carry out various county activities. *McCutchen v. Huckabee*, 328 Ark. 202, 943 S.W.2d 225 (1997).

14-37-107. Advancement of cities and towns according to census.

(a) It shall be the duty of the Governor, State Auditor, and Secretary of State, or any two (2) of them, to ascertain from the federal census and census provided for by law of this state, what cities of the second class are entitled to become cities of the first class and what incorporated towns are entitled to become cities and their proper class. The Governor shall cause a statement thereof to be prepared and transmitted to the mayor of the city or town, stating the grade to which it has been advanced.

(b) As soon as the statement shall have been received by the mayor, as provided in subsection (a) of this section, showing that any city or town will be entitled, at the next regular annual period for the election of municipal officers, to be organized into a city of the first or second class, as the case may be, it shall be the duty of the proper corporate authority of the city or incorporated town to make and publish such bylaws or ordinances as shall be necessary to perfect such organization in respect to the election, duties, and compensation of such officers, or otherwise.

History. Acts 1875, No. 1, §§ 3, 4, p. 1; §§ 9485, 9488; Acts 1943, No. 160, § 1; C. & M. Dig., §§ 7452, 7455; Pope's Dig., A.S.A. 1947, §§ 19-209, 19-210.

CASE NOTES

Void Orders.

An order made by the state board of municipal corporations raising an incorporated town to a city of the second class was void where census list required by statute had not been filed in mayor's office 30 days prior to the date the order was made. *Bush v. Echols*, 178 Ark. 507, 10 S.W.2d 906 (1928).

Where 1910 federal census showed a population of 2,331 and 1920 federal census showed a population of 2,836, it was

proper to find that the special census taken in 1879 was fraudulent (there being testimony that some persons included in the count did not live within the city), that the order making it a second-class city was void ab initio, and that the town did not become a city until after 1910. *City of Searcy v. Roberson*, 256 Ark. 1081, 511 S.W.2d 627 (1974).

Cited: *Clark v. Mahan*, 268 Ark. 37, 594 S.W.2d 7 (1980).

14-37-108. Application for advancement between census periods.

(a) The State Auditor, Secretary of State, and Attorney General may declare incorporated towns cities of the second class, and cities of the second class cities of the first class, between the periods fixed in § 14-37-107(a), upon application from any incorporated town or city of the second class, accompanied by a resolution adopted by the town or city council, asking to be so declared a city of the first or second class, as the case may be.

(b) The application shall be accompanied with satisfactory evidence showing the population of the town or city to be large enough to entitle it to such advancement.

History. Acts 1875, No. 1, § 3, p. 1; C. & M. Dig., § 7453; Pope's Dig., § 9486; A.S.A. 1947, § 19-211.

Publisher's Notes. As to validation of acts, proceedings, enumerations, resolutions, and ordinances passed by incorporated towns declared to be cities of the second class, notwithstanding any irregu-

larities, defects, errors, or informalities in such proceedings, see Acts 1909, No. 167, § 1. As to ratification of the actions of de facto officers of cities that been advanced under special acts that had been held unconstitutional, see Acts 1915, No. 212, § 1.

CASE NOTES

Validating Acts.

Acts 1909, No. 167 was not intended to cure an ordinance fixing a date for the election of city officers different from the date fixed by statute for such an election. *McMahan v. State*, 102 Ark. 12, 143 S.W. 94 (1912).

The actions of municipal officers in creating a local improvement district and

levying assessments, performed subsequent to the passage of Acts 1915, No. 212, and before an election was held to elect new officers, were valid as were the formation of the district and the assessments. *Cotten v. Hughes*, 125 Ark. 126, 187 S.W. 905 (1916).

14-37-109. Appointment of enumerators to take census.

(a)(1) Whenever any city or incorporated town shall desire to be made a city of the first or second class, or if it shall be deemed necessary to determine the number of inhabitants within the town or city for any purpose, on petition of ten (10) qualified voters of the town or city filed with the recorder thereof, the board of aldermen of the town or city shall, at its next regular meeting, consider the petition.

(2) If the board deems the prayer of petitioners well founded and deems that a census of the town or city should be taken in accordance with the prayer of the petitioners, the board may pass a resolution authorizing and directing the taking of a census of the town or city, and the mayor shall appoint enumerators to take the census, the appointees to be approved by the board.

(b)(1) The resolution authorizing the taking of census shall prescribe the duties of the enumerators as to when and how to proceed.

(2) Not more than one (1) enumerator shall be appointed for each ward. However, one (1) enumerator may take more than one (1) ward if the board deems it proper.

History. Acts 1903, No. 46, § 1, p. 78;
C. & M. Dig., § 7662; Pope's Dig., § 9784;
A.S.A. 1947, § 19-212.

14-37-110. Returns of enumerators.

(a)(1) Before the enumerators shall enter upon their duties, they shall make and subscribe to an oath to well and faithfully perform their duties, and their return shall be taken as true.

(2)(A) However, the returns so made by the census enumerators shall be filed in the office of the mayor and shall be subject to examination of the public for thirty (30) days.

(B) Any correction thereof may be made if proper proof is made before the board of aldermen to their satisfaction authorizing the correction sought to be made.

(b) The enumerators shall be entitled to and receive two and one-half cents (2½¢) per name for all names found to be authentic by the board of aldermen, to be paid by the town or city.

History. Acts 1903, No. 46, §§ 2, 3, p. 78; C. & M. Dig., § 7663; Pope's Dig., § 9785; A.S.A. 1947, §§ 19-213, 19-214.

14-37-111. Reduction of city to lower grade — In general.

(a) Whenever the last federal census shows that any city of the first class has fewer than two thousand five hundred (2,500) inhabitants and that any city of the second class has fewer than five hundred (500) inhabitants, the city may be reduced to a city of the second class or to an incorporated town, respectively, upon the adoption of a resolution by

the council of the municipal corporations requesting that the grade of the corporations be reduced.

(b)(1) The state Board of Municipal Corporations, upon the receipt of a certified copy of the resolution, shall make an order reducing the grade of the municipal corporation.

(2) Upon being advised of the action of the board, the Governor shall cause a statement to be prepared and transmitted to the mayor of the city or town stating the grade to which it has been reduced.

(c) Whenever a city of the first class is reduced to the grade of a city of the second class or an incorporated town, the mayor of the city shall automatically become the police judge, and the office of police judge shall automatically be abolished. All other officers of a city whose grade may be reduced shall continue in office until the next general election for the city or town.

History. Acts 1931, No. 61, §§ 1, 2;
Pope's Dig., §§ 9547, 9548; A.S.A. 1947,
§§ 19-216, 19-217.

14-37-112. Incorporated town may become city of the second class.

(a)(1) Any incorporated town in this state may become a city of the second class by the adoption and publication of an ordinance, duly adopted and published as provided by law, converting the incorporated town into a city of the second class. However, after the adoption and publication of the ordinance, the qualified voters of the town shall vote in any general election, or a special election called by the mayor, in favor of the ordinance.

(2) If a majority of the qualified electors voting in the election vote in favor of the ordinance, a certified copy of the ordinance shall be filed with the Secretary of State. Thereupon the incorporated town shall become a city of the second class.

(b)(1) The officers of the incorporated town, upon the filing with the Secretary of State of the certified copy of the ordinance, shall immediately become officers of the city of the second class, with full authority to proceed, do, and perform any and all things for, and on behalf of, the city of the second class as if elected as officers of the city of the second class. They shall serve as such officers for the full period of time for which they were elected or until their successors are elected and qualified.

(2)(A) At the regular time for holding election of officers of incorporated towns, there shall be an election for the election of officers of the city of the second class who shall hold office as officers of the city of the second class until the next regular time fixed by law for electing officers of a city of the second class or until their successors are elected and qualified.

(B) However, the mayor of the incorporated town which has been raised to a city of the second class may call a special election by

proclamation effective thirty (30) days after its date which shall be published by two (2) insertions within the thirty-day period in a newspaper of general circulation in the county in which the city is located. This special election shall be held for the purpose of electing officers for the city of the second class.

History. Acts 1937, No. 334, § 1; Pope's Dig., § 9484; Acts 1939, No. 211, § 1; 1947, No. 227, § 1; A.S.A. 1947, § 19-215.

Publisher's Notes. As to validation of acts of officers of municipalities that

raised their classification from incorporated town to cities of the second class under Acts 1937, No. 334, as amended by Acts 1939, No. 211, see Acts 1947, No. 227, § 2.

CASE NOTES

ANALYSIS

Constitutionality.

Applicability.

Certified copy of ordinance.

Constitutionality.

This section was held not unconstitutional as delegating to towns or the inhabitants thereof the authority to raise the classification of towns. *Gross v. Homard*, 201 Ark. 391, 144 S.W.2d 705 (1940).

Applicability.

This section applies to all incorporated towns in the state and is a general and not

a special law. *Gross v. Homard*, 201 Ark. 391, 144 S.W.2d 705 (1940).

Certified Copy of Ordinance.

When certified copy of ordinance raising classification of municipality from town to city of the second class is filed with secretary of state as required, the town immediately becomes a city of the second class and the officers thereof immediately become officers of a city of the second class. *Luther v. Gower*, 233 Ark. 496, 345 S.W.2d 608 (1961).

Cited: *Logan v. Harris*, 213 Ark. 37, 210 S.W.2d 301 (1948).

14-37-113. Effect of population changes on legislation.

Whenever any law of this state provides that the provisions of it shall apply to any city within a defined population classification, it is declared to be the intent of the General Assembly that, in the event any city to which the law was applicable at the time of the enactment of that law shall subsequently achieve a lesser or greater population than the classification prescribed by law, the law shall nevertheless thereafter be equally applicable to any such city, irrespective of the fact that the city no longer has a population within the classification prescribed by the law.

History. Acts 1967, No. 498, § 1; A.S.A. 1947, § 19-218.

14-37-114. Reduction of city of the first class to city of the second class.

(a) Whenever the last federal census shows that any city of the first class has less than five thousand (5,000) inhabitants, the city may be reduced to a city of the second class upon the adoption of a resolution by the council of the municipal corporation requesting that the grade of the municipal corporation be reduced.

(b) The state Board of Municipal Corporations, upon the receipt of a certified copy of such resolution, shall make an order reducing the grade of the municipal corporation, and, upon being advised of the action of the board, the Governor shall cause a statement thereof to be prepared and transmitted to the mayor of such city stating the grade to which the municipal corporation has been reduced.

History. Acts 1991, No. 514, § 1.

CHAPTER 38

INCORPORATION AND ORGANIZATION OF MUNICIPALITIES

SECTION.

- 14-38-101. Petition for incorporation.
- 14-38-102. [Repealed.]
- 14-38-103. Hearing on petition.
- 14-38-104. Order of incorporation — Transcript.
- 14-38-105. Completion of incorporation.
- 14-38-106. Complaint to prevent organization.
- 14-38-107. Hearing on complaint — Annulment.

SECTION.

- 14-38-108. First election of officers.
- 14-38-109. City or town lying in more than one county.
- 14-38-110, 14-38-111. [Repealed.]
- 14-38-112. Reactivation of inactive city or incorporated town.
- 14-38-113. Reorganization under different form of government.
- 14-38-114. Preservation of papers.

Publisher's Notes. Acts 1875, No. 1, § 31, preserved the rights, liabilities, and property of municipal corporations organized prior to adoption of the act.

Cross References. Emergency temporary location for political subdivisions, § 14-14-308.

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

Acts 1961, No. 131, § 3: Feb. 22, 1961. Emergency clause provided: "Whereas, a number of cities and towns in the State of Arkansas lie within more than one county, and whereas, confusion exists as to the validity of the acts of the officers of such cities and towns and as to the manner and form of holding elections therein and the exercising of corporate powers by the officers of said cities and towns thereby threatening the health, peace, safety, and general welfare of citizens of the State of Arkansas, an emergency is hereby declared to exist, and this act shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 711, § 4: Apr. 28, 1971. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that a number of incorporated towns have become inactive in this State, but the activations of such incorporated towns is essential to the providing of necessary municipal services for the citizens of such incorporated town, and that the immediate passage of this Act is necessary to establish procedures for the reactivation of such incorporated towns, and for the election of the officials thereof. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 635, § 2: Sept. 1, 1975.

Acts 1980 (1st Ex. Sess.), No. 21, § 3: Jan. 25, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that when a municipality votes to change its form of government that a hardship exists when such municipality must wait to elect officials of such municipality in the manner and time provided by law for the election of such municipal officials; that a need exists that such municipality government

offices be filled immediately by the calling of a special election to allow such municipality to properly effectuate the newly elected change of government. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1980 (1st Ex. Sess.), No. 70, § 3: Feb. 6, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that when a municipality votes to change its form of government that a hardship exists when such municipality must wait to elect officials of such municipality in the manner and time provided by law for the election of such municipal officials; that a need exists that such municipality government offices be filled immediately by the calling of a special election to allow such municipality to properly effectuate the newly elected

change of government. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 439, § 3: Mar. 13, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present procedure for the incorporation of rural communities is unduly restrictive and that many parts of rural Arkansas which need the services of an incorporated town are unable to incorporate due to the present requirements of the law, and that this Act is necessary to liberalize the incorporation requirements for such rural communities. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., § 30 et seq.

C.J.S. 62 C.J.S., Mun. Corp., § 6 et seq.

87 C.J.S., Towns, § 6.

UALR L.J. Heller and Sallings, Survey of Public Law, 3 UALR L.J. 296.

14-38-101. Petition for incorporation.

(a)(1) When the inhabitants of a part of any county not embraced within the limits of any city or incorporated town shall desire to be organized into a city or incorporated town, they may apply, by a petition in writing, signed by not fewer than seventy-five (75) qualified voters residing within the described territory, to the county court of the proper county.

(2) The petition shall:

(A) Describe the territory proposed to be embraced in the incorporated town and have annexed to it an accurate map or plat thereof;

(B) State the name proposed for the incorporated town; and

(C) Name the persons authorized to act in behalf of the petitioners in prosecuting the petition.

(b)(1) The court shall not approve the incorporation of any municipality if any portion of the territory proposed to be embraced in the incorporated town shall lie within five (5) miles from the corporate limits of an existing municipal corporation unless the governing body of the municipal corporation has, by written resolution, affirmatively consented to the incorporation.

(2)(A) The five-mile limitation shall not apply if the area proposed to be incorporated is separated from the corporate limits of an existing

municipality by a natural barrier that makes the area to be incorporated inaccessible to the existing municipality.

(B) The five-mile limitation shall not apply if the area proposed to be incorporated are lands upon which a real estate development by a single developer, containing not less than five thousand (5,000) acres has been or is being developed under a comprehensive plan for a community containing streets and other public services, parks, and other recreational facilities for common use by the residents thereof, churches, schools, and commercial and residential facilities, and which has been subdivided into sufficient lots for residential use to accommodate a projected population of not fewer than one thousand (1,000) persons, and for which a statement of record has been filed with the Secretary of Housing and Urban Development under the Interstate Land Sales Full Disclosure Act.

(c) When any petition shall be presented to the court, it shall be filed in the office of the county clerk, to be kept there, subject to the inspection of any persons interested, until the time appointed for the hearing of it.

(d)(1) The court shall, at or before the time of the filing, fix and communicate to the petitioners, or their agent, a time and place for the hearing of the petition, which time shall not be less than thirty (30) days after the filing of the petition.

(2)(A)(i) Thereupon, the petitioners or their agent shall cause a notice to be published in some newspaper of general circulation in the county for not less than three (3) consecutive weeks.

(ii) If there is no newspaper of general circulation in the county, a notice shall be posted at some public place within the limits of the proposed incorporated town for at least three (3) weeks before the time of the hearing.

(B) The notice shall contain the substance of the petition and state the time and place appointed for the hearing.

History. Acts 1875, No. 1, § 35, p. 1; C. & M. Dig., § 7664; Pope's Dig., § 9786; Acts 1975, No. 635, § 1; 1979, No. 606, § 1; 1983, No. 439, § 1; A.S.A. 1947, § 19-101.

U.S. Code. The Interstate Land Sales Full Disclosure Act, referred to in this section, is codified as 15 U.S.C. § 1701 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Handbook to the Interstate Land Sales Full Disclosure Act. 27 Ark. L. Rev. 65.

CASE NOTES

ANALYSIS

Agents.
Description of territory.
Notice.

Qualified voters.

Agents.
Statutory provisions relating to annexation of territory at the instance of agents

of an existing municipal corporation were held intended to afford a right of action to parties claiming to be affected, but such an action was held to be an independent proceeding, as distinguished from appeal. *Pike v. City of Stuttgart*, 200 Ark. 1010, 142 S.W.2d 233 (1940).

Description of Territory.

Where limits of proposed municipality are unreasonably large, incorporation of the municipality will be denied. *Arkansas & O. Ry. v. Busch*, 223 Ark. 27, 264 S.W.2d 54 (1954).

Contention that lands to be annexed were not described in petition and that no map or plat was filed as required by law held to have failed. *Mahone v. Rogers*, 234 Ark. 540, 353 S.W.2d 184 (1962).

A description of property under this section must be sufficient to render possible the ascertainment of the boundaries involved and the territories intended to be included. *Parrish v. City of Russellville*, 253 Ark. 1000, 490 S.W.2d 126 (1973).

Published description of property required by this section is insufficient where description does not encircle any geographical area nor describe a geographical area to be annexed, but merely describes a

line, as such a description fails to comply with requirement that the petition describe "the territory to be embraced." *Parrish v. City of Russellville*, 253 Ark. 1000, 490 S.W.2d 126 (1973).

Notice.

Erroneous legal description in published notice does not void incorporation, because this section only requires the published notice to contain substance of petition and the time and place of the hearing. *Dunkum v. Moore*, 265 Ark. 544, 580 S.W.2d 183 (1979).

Qualified Voters.

While petition of required number of electors can initiate incorporation procedure, concurrence of majority of area inhabitants is required to override challenge to incorporation lodged under § 14-38-107. *Town of Wrightsville v. Walton*, 255 Ark. 523, 501 S.W.2d 241 (1973).

The term "inhabitants" as used in this section means qualified voters residing within the proposed municipality. *Dunkum v. Moore*, 265 Ark. 544, 580 S.W.2d 183 (1979).

Cited: *Gerrin v. Hickey*, 464 F Supp. 276 (E.D. Ark. 1979); *White v. Lorings*, 274 Ark. 272, 623 S.W.2d 837 (1981).

14-38-102. [Repealed.]

Publisher's Notes. This section, concerning refiling of certain petitions withdrawn prior to court action, was repealed

by Acts 1993, No. 1121, § 1. The section was derived from Acts 1977, No. 556, § 1; A.S.A. 1947, § 19-101.4.

14-38-103. Hearing on petition.

(a)(1) Every incorporation hearing under this chapter shall be public and may be adjourned from time to time.

(2) Any person interested may appear and contest the granting of the prayer of the petition, and affidavits in support of or against the petition, which may be prepared and submitted, shall be examined by the county court.

(b)(1) The court may, in its discretion, permit the agent named in the original petition to amend or change it.

(2) However, no amendment shall be permitted whereby territory not before embraced shall be added or the character of the proposed city or incorporated town changed from special to general, or from general to special, without appointing another time for a hearing and requiring new notice to be given as provided in § 14-38-101.

History. Acts 1875, No. 1, § 36, p. 1; C. & M. Dig., § 7665; Pope's Dig., § 9787; A.S.A. 1947, § 19-102.

Cross References. Hearing on petitions in annexation proceedings, § 14-40-602.

CASE NOTES

ANALYSIS

In general.
Amendments.
Any persons interested.

In General.

An injunction in equity to prohibit the incorporation of a municipality and to prevent the elected officers from functioning would be denied since there was an adequate remedy at law. *Bragg v. Thompson*, 177 Ark. 870, 9 S.W.2d 24 (1928).

Petition to incorporate a new municipality and petition to annex such territory to an existing city are properly consolidated for hearing and appeal. *Chastain v. City of Little Rock*, 208 Ark. 142, 185 S.W.2d 95 (1945).

Amendments.

It is not within the jurisdiction of a county court to amend an annexation petition by adding territory. *Rooker v. City of Little Rock*, 234 Ark. 372, 352 S.W.2d 172 (1961).

On appeal, a circuit court is within the bounds of its authority when it disregards a void amendment allowed by the county court in an annexation proceeding and hears the case on the original petition, as if it had been originally brought in the circuit court, and as if no amendment had been made. *Rooker v. City of Little Rock*, 234 Ark. 372, 352 S.W.2d 172 (1961).

Any Persons Interested.

Protestants who appeared at the hearing and orally objected to the proposed annexation were qualified to appeal from the county court to the circuit court even though they had filed no written remon-

strance or other pleading. *Skinner v. City of El Dorado*, 248 Ark. 916, 454 S.W.2d 656 (1970).

"Any person interested" means any person who has some interest in the municipality or the area to be annexed. *City of Crossett v. Anthony*, 250 Ark. 660, 466 S.W.2d 481 (1971); *Turner v. Wiederkehr Village*, 261 Ark. 72, 546 S.W.2d 717 (1977).

In case where city was petitioning for annexation of two separate areas and persons who opposed all resided or had property in one area, there was no interested party contesting the annexation of the other area, and a motion to dismiss as to the latter area should have been granted. *City of Crossett v. Anthony*, 250 Ark. 660, 466 S.W.2d 481 (1971).

At least some interest must be shown on trial de novo in a circuit court in the face of a motion to dismiss for lack of interest. *Turner v. Wiederkehr Village*, 261 Ark. 72, 546 S.W.2d 717 (1977).

Attorney who owned property near village to be annexed and had contingent fee contract under which he would acquire property in the village if he won his client's lawsuit did not have standing to challenge the incorporation in the absence of a showing that he was threatened with a direct pecuniary damage not shared by members of the public in general. *Turner v. Wiederkehr Village*, 261 Ark. 72, 546 S.W.2d 717 (1977).

Cited: *Town of Ouita v. Heidgen*, 247 Ark. 943, 448 S.W.2d 631 (1970); *White v. Lorings*, 274 Ark. 272, 623 S.W.2d 837 (1981); *Town of Beaver v. Ratliff*, 282 Ark. 516, 669 S.W.2d 467 (1984).

14-38-104. Order of incorporation — Transcript.

(a) If the county court shall be satisfied, after hearing the petition, that at least seventy-five (75) qualified voters reside therein, or within the limits described by the petition, and that the petition has been signed by them; that the limits have been accurately described and an accurate map or plat thereof made and filed; that the name proposed for the city or incorporated town is proper and sufficient to distinguish it from others of like kind in the state; and, moreover, that it shall be

deemed right and proper, in the judgment and discretion of the court, that the petition shall be granted, then the court shall make out and endorse on the petition an order to the effect that the city or incorporated town as named and described in the petition may be organized.

(b)(1) The order shall be signed and delivered by the court, together with the petition and the map or plat, to the recorder of the county, whose duty it shall be to record it as soon as possible in the proper book or records and to file and preserve in his office the original papers, having certified thereon that it has been properly recorded.

(2) It shall also be the duty of the recorder to make out and certify, under his official seal, two (2) transcripts of the record. He shall forward one (1) copy to the Secretary of State and deliver one (1) copy to the agent of the petitioners, with a certificate thereon that a similar transcript has been forwarded to the Secretary of State as provided by this section.

History. Acts 1875, No. 1, § 37, p. 1; C. & M. Dig., § 7666; Pope's Dig., § 9788; A.S.A. 1947, § 19-103; Acts 1995, No. 299, § 1.

Amendments. The 1995 amendment,

in (a), substituted "seventy-five (75) qualified voters" for "twenty (20) qualified voters," inserted "that" following "moreover," and made minor punctuation changes.

CASE NOTES

ANALYSIS

In general.
Appeals.
Maps or plats.
Transcripts.

In General.

On the passage of the Act of April 20, 1873, for the addition of territory to municipal corporations, Du Val's addition to the city of Little Rock became and continued a part of the city and was not cut off, as was attempted by the Act of March 9, 1877, "to define the boundary of the city," the act being unconstitutional. *City of Little Rock v. Parish*, 36 Ark. 166 (1880).

Appeals.

Parties who file a remonstrance and thus become parties may appeal. *Barnwell v. Town of Gravette*, 87 Ark. 430, 112 S.W. 973 (1908).

In action by municipality for annexation of additional territory, the circuit court on appeal from the county court will try the case de novo, and such decision by the circuit court will be affirmed by the Supreme Court if there is any substantial

evidence to support it. *Burton v. City of Ft. Smith*, 214 Ark. 516, 216 S.W.2d 884 (1949).

Judgment in favor of annexation of large tract of land on ground that annexation was needed for municipal expansion will be affirmed if there is substantial evidence to support such judgment, although there is evidence that some of the land is valuable as agricultural land. *Burton v. City of Ft. Smith*, 214 Ark. 516, 216 S.W.2d 884 (1949).

Maps or Plats.

Corners established by a government survey are conclusive and cannot be collaterally attacked. *Burton v. City of Ft. Smith*, 214 Ark. 516, 216 S.W.2d 884 (1949).

Transcripts.

The transcripts mentioned in this section are the records required to be delivered to the county recorder, and in turn certified. *Pike v. City of Stuttgart*, 200 Ark. 1010, 142 S.W.2d 233 (1940).

Cited: *Dunkum v. Moore*, 265 Ark. 544, 580 S.W.2d 183 (1979).

14-38-105. Completion of incorporation.

(a) As soon as the record shall be made and the transcript certified, forwarded, and delivered, the inhabitants within the limits described in the petition shall be deemed a city or incorporated town, to be organized and governed under the provisions of this subtitle in like manner as if specially named therein.

(b) As soon as the city or incorporated town shall be actually organized, by election of its officers as provided in § 14-38-108, notice of its existence as such shall be taken in all judicial proceedings in the state.

History. Acts 1875, No. 1, § 38, p. 1; C. & M. Dig., § 7667; Pope's Dig., § 9789; A.S.A. 1947, § 19-104.

14-38-106. Complaint to prevent organization.

(a) One (1) month shall elapse from the time the transcripts are forwarded and delivered before notice shall be given of an election of officers in the city or incorporated town.

(b) At any time within the one (1) month, any person interested may make complaint in writing, in the nature of an application for an injunction to the circuit court, or the judge in vacation, having given at least five (5) days' notice thereof. He shall furnish a copy of the complaint to the agent of the petitioners for the purpose of having the organization of the proposed city or incorporated town prevented.

History. Acts 1875, No. 1, § 39, p. 1; C. & M. Dig., § 7668; Pope's Dig., § 9790; A.S.A. 1947, § 19-105.

CASE NOTES

ANALYSIS

Appeals.

Collateral attack.

Appeals.

Where, following dismissal by county court of complaint protesting annexation of territory, affidavit and prayer for appeal was filed within 30 days, appeal was granted, and transcript was lodged with the circuit clerk more than 30 days after dismissal, transcript was held filed in ample time and appeal was held improperly dismissed. *Pike v. City of Stuttgart*, 200 Ark. 1010, 142 S.W.2d 233 (1940).

Collateral Attack.

Action attacking validity of organization of municipality instituted more than

one month after transcript of the county court's order authorizing its organization has been forwarded and delivered is a collateral attack on the judgment of the court. *Bragg v. Thompson*, 177 Ark. 870, 9 S.W.2d 24 (1928).

County court's order of incorporation of a town that appears valid on its face was held not subject to collateral attack by action instituted by taxpayer over one month after forwarding and delivery of the order of incorporation to the secretary of state. *Bridges v. Incorporated Town of Gateway*, 192 Ark. 411, 91 S.W.2d 592 (1936).

Cited: *Town of Wrightsville v. Walton*, 255 Ark. 523, 501 S.W.2d 241 (1973).

14-38-107. Hearing on complaint — Annulment.

(a) It shall be the duty of the court or judge to hear the complaint in a summary manner, receiving answers, affidavits, and proofs, as may be deemed pertinent.

(b) If it shall appear to the satisfaction of the court or judge that the proposed city or incorporated town does not contain the requisite number of inhabitants, that a majority of them have not signed the original petition, or that the limits of the proposed city or incorporated town are unreasonably large or small or are not properly and sufficiently described, then the court or judge shall order the record of the incorporated town to be annulled.

(c)(1) It shall be the duty of the county recorder to endorse on the record the order so made and to certify and transmit to the Secretary of State a copy of the order.

(2) Thereupon, the record shall be of no effect, but the proceeding shall in no manner bar a subsequent petition to the county court, on the same subject, by complying with the provisions of this chapter.

History. Acts 1875, No. 1, § 39, p. 1; C. & M. Dig., § 7669; Pope's Dig., § 9791; A.S.A. 1947, § 19-106.

CASE NOTES**ANALYSIS**

Limits large or small.
Majority of inhabitants.
Proper and sufficient description.
Requisite number of inhabitants.

Limits Large or Small.

Where evidence shows that the limits of a proposed municipality are unreasonably large, incorporation of the municipality will be denied. *Arkansas & O. Ry. v. Busch*, 223 Ark. 27, 264 S.W.2d 54 (1954).

A court errs in refusing to approve an incorporated area where the area is not unreasonably large based on size, population, and buildings located in it. *White v. Lorings*, 274 Ark. 272, 623 S.W.2d 837 (1981).

Majority of Inhabitants.

Where majority of inhabitants in area that seeks to incorporate into municipality have not concurred on incorporation, order of incorporation is properly set aside. *Town of Wrightsville v. Walton*, 255 Ark. 523, 501 S.W.2d 241 (1973).

While incorporation order can be entered based on petition of requisite number of electors, concurrence of majority of

area inhabitants is required to override challenge to incorporation lodged under this section. *Town of Wrightsville v. Walton*, 255 Ark. 523, 501 S.W.2d 241 (1973).

Proper and Sufficient Description.

The fact that there is error in a trial court's finding that the description of the proposed incorporated limits is vague and indefinite will not necessarily require reversal where the judgment is required to be affirmed on other grounds. *Town of Ouita v. Heidgen*, 247 Ark. 943, 448 S.W.2d 631 (1970).

Requisite Number of Inhabitants.

The term "inhabitants," as used in this section, means qualified voters residing within the proposed municipality. *Dunkum v. Moore*, 265 Ark. 544, 580 S.W.2d 183 (1979).

Testimony of county clerk as to the number of qualified voters in an area proposed for incorporation is properly admitted, whether the testimony of the county clerk is considered opinion testimony of a lay witness or an opinion of an expert. *Dunkum v. Moore*, 265 Ark. 544, 580 S.W.2d 183 (1979).

14-38-108. First election of officers.

(a) Unless the agent of the petitioners, within thirty (30) days after a transcript shall be delivered as provided in § 14-38-104, shall be notified of a complaint having been made to the circuit court of the county, or a judge thereof, then, at the end of the thirty (30) days after the dismissal of the complaint, the agent shall give public notice, by posting a notice at three (3) or more public places within the limits of the city or incorporated town, of the time and place of holding the first election for officers of the city or incorporated town.

(b) The election shall be conducted and the officers elected and qualified in the manner prescribed by law in like cases.

(c) If the election shall be held at any other time than that prescribed by law for the regular election of the officers, the officers elected shall continue in office so long and in like manner as if they had been elected at the preceding period of the regular election.

History. Acts 1875, No. 1, § 40, p. 1; C. & M. Dig., § 7670; Pope's Dig., § 9792; A.S.A. 1947, § 19-107.

14-38-109. City or town lying in more than one county.

(a) Every city and incorporated town presently lying in more than one (1) county and presently exercising the rights, privileges, and powers of a municipal corporation, de facto or de jure, and heretofore incorporated or attempted to have been incorporated under any special act of the General Assembly of the State of Arkansas, or in any other manner incorporated under color of law, is declared to be a duly incorporated city or incorporated town of that classification which the city or town may presently enjoy as certified by the Secretary of State, as fully to all intents and purposes as though the city or town had been duly incorporated under the general laws of the State of Arkansas.

(b) Each act and deed heretofore done by any officers of the city or incorporated town in their official capacity under color of office for or in behalf of the city or incorporated town is cured, validated, and declared confirmed and shall have the same force and effect as though the city or incorporated town had been lawfully incorporated under the general statutes of the State of Arkansas.

History. Acts 1961, No. 131, § 1; A.S.A. 1947, § 19-109.

14-38-110, 14-38-111. [Repealed.]

Publisher's Notes. These sections, concerning area near national forest and relocation of community because of reservoir, were repealed by Acts 1995, No. 555, § 1. They were derived from the following sources:

14-38-110. Acts 1979, No. 472, §§ 1-3; A.S.A. 1947, §§ 19-101.1 — 19-101.3.

14-38-111. Acts 1981, No. 976, § 1; A.S.A. 1947, § 19-113.

14-38-112. Reactivation of inactive city or incorporated town.

(a) The government of any city or incorporated town in this state which has become inactive because of failure to elect the officials of the city or incorporated town and no action has been taken to dissolve the charter of the city or incorporated town may be reactivated upon petition of a majority of the qualified electors of the city or incorporated town as provided in this section.

(b)(1)(A) Whenever a majority of the qualified electors of any inactive city or incorporated town as determined by the total number of qualified registered voters in the city or incorporated town shall desire to reactivate the government of the city or incorporated town, they may file a petition therefor with the county court of the county in which the city or incorporated town is located.

(B) The petition authorized in this section shall request the county court to call a special election for the election of mayor, aldermen, and other elected officials of the city or incorporated town.

(C)(i) When any petition is filed with the court, the court shall set a date for a hearing on the petition.

(ii) The date for the hearing shall not be less than thirty (30) days after the filing of the petition.

(2)(A) Between the time of the filing of the petition and the date of the hearing, the petitioners shall cause a notice to be published in some newspaper of general circulation in the county where the affected city or incorporated town lies, which shall be published by one (1) insertion in the newspaper.

(B) If there is no newspaper of general circulation in the county, notice shall be posted in some public place within the limits of the city or incorporated town and in the county seat of the county in which the city or incorporated town is located, for the next three (3) weeks before the date of the hearing.

(C) The notice referred to in this subdivision shall contain the substance of the petition and shall state the time and place appointed for the hearing thereof.

(c)(1) The purpose of the hearing shall be to determine the sufficiency of the petitions.

(2)(A) If the county court shall determine that a majority of the qualified electors of the city or incorporated town, as reflected by the voter registration records of the county, shall have petitioned for the calling of a special election to elect the municipal officials of the city or incorporated town, the county court shall enter an order approving the petitions and shall call a special election for the election of the officials of the city or incorporated town.

(B)(i) The election shall be called within sixty (60) days of the order of the county court.

(ii) The election shall be conducted in the same manner as provided by law for the conducting of special elections to elect officials of a newly incorporated city or town.

(C) The officials so elected shall assume the duties of their respective offices in the same manner and for such terms as provided by law for officials of newly incorporated cities or towns.

History. Acts 1971, No. 711, § 1,
A.S.A. 1947, § 19-112.

CASE NOTES

Cited: Cash v. Holder, 293 Ark. 537, 739
S.W.2d 538 (1987).

14-38-113. Reorganization under different form of government.

(a) When any municipality of this state is entitled by law to become reorganized under a different form of municipal government than that under which the municipality is operating, whether the form is the aldermanic form of government, the city manager form of government, or the commission form of government, upon the approval of a majority of the qualified electors of the municipality voting on the issue at an election called therefor, an election to submit the question of becoming organized under any such form of municipal government shall be called and conducted in the manner provided in this section:

(1)(A) When petitions shall be filed with the mayor containing the signatures of qualified electors of the municipality equal in number to fifteen percent (15%) of the aggregate number of votes cast at the preceding general municipal election of all candidates for mayor in the case of a municipality operating under the aldermanic form of government or the commission form of government, and for all candidates for the office of director for the director position for which the greatest number of votes were cast in the case of a municipality operating under the manager form of government, requesting that an election be called to submit the proposition of organizing the municipality under any other form of municipal government authorized by the laws of this state, a special election shall be called by the mayor by proclamation, and the date of the election shall be specified therein.

(B) The proclamation shall be published one (1) time at length in a newspaper having a general circulation in the municipality, and notice of the election shall be published in the newspaper one (1) time a week for two (2) weeks, with the first publication to be not less than fifteen (15) days before the date set for the election;

(2)(A) At the election, the proposition shall be submitted to the electors in substantially the following form:

“FOR the proposition to organize this city under the form
of government ☐”
“AGAINST the proposition to organize this city under the
form of government ☐”

(B)(i) The election thereupon shall be conducted, the votes canvassed, and the results declared in the same manner as is provided by law with respect to other city elections.

(ii) The county board of election commissioners shall certify the results of any election to the mayor. The result so certified shall be conclusive and not subject to attack unless suit is brought to contest the certification within thirty (30) days after the certification in the circuit court of the county in which the municipality is situated;

(3)(A) If a majority of the votes cast at the election shall be in favor of the proposition, and no suit is brought to contest the certification of the results of the election within the thirty-day period after the certification by the county board of election commissioners, the mayor shall file with the Secretary of State and the county clerk of the county in which the municipality is situated certificates stating that the proposition was adopted.

(B) Thereafter, the municipality shall proceed to elect officials of the municipality in the manner and at the time provided by law for the election of municipal officials in municipalities operating under the form of government adopted by the municipality.

(C)(i) However, if a municipality votes to change its form of government and the date of the election to change its form of municipal government is six (6) months or more prior to the next regular general election for municipal officials, the mayor of the municipality shall, by proclamation, call a special election for the purpose of electing municipal officials under the form of government adopted by the municipality. When the officials are elected, the municipality shall proceed to organize and operate under the newly adopted form of government.

(ii)(a) The mayor's proclamation shall be issued within one (1) business day after the results of the election have been certified to him.

(b) The proclamation shall be published at least one (1) time a week for two (2) weeks in a newspaper having general circulation within the municipality, and the date of the special election shall be within fifty-five (55) days from the date of the proclamation calling the special election;

(4)(A) When any municipality shall change forms of government in the manner provided in this section, the question of changing the form of government of the municipality shall not again be submitted to the electors thereof until the expiration of four (4) years from the date on which the first officers are elected for the form of government adopted at the election.

(B) If a majority of the qualified electors of a municipality shall vote against adopting a different form of government, the question shall not again be submitted to the electors thereof for a period of two (2) years after the date of the election in which the proposed change of government in the municipality was rejected;

(5)(A) Each signature on a petition filed, as provided in this section, shall have been signed within one hundred eighty (180) days prior to

the filing of the petition. All signatures not signed within this time shall be void for the purposes of determining the adequate number of signatures required to call an election under this section.

(B) The date of execution of the petitions may be established by affidavit of the person circulating the petition or by the person signing the petition affixing the date of signing immediately following his name.

(b) It is the intent and purpose of this section to prescribe a uniform procedure whereby municipalities of this state may submit to the qualified electors of any such municipality the proposition of adopting and becoming organized under any form of municipal government authorized under the laws of this state.

History. Acts 1965, No. 497, § 1-3; 21, § 1; 1980 (1st Ex. Sess.), No. 70, § 1; 1975, No. 6, § 1; 1980 (1st Ex. Sess.), No. A.S.A. 1947, §§ 19-110, 19-111, 19-111n.

CASE NOTES

ANALYSIS

Petitions.

Special elections.

Petitions.

A petition filed under this section is not an initiative petition under Ark. Const. Amend. 7 and, therefore, need not be filed more than 60 days before a general election. *Dingle v. City of Eureka Springs*, 242 Ark. 382, 413 S.W.2d 641 (1967).

Special Elections.

A chancery court was held to have no jurisdiction of a mandamus action to compel a special election under this section. *Dingle v. City of Eureka Springs*, 242 Ark. 382, 413 S.W.2d 641 (1967).

A complaint contesting a special election which alleged that the proposed change in city government was an initiated procedure and therefore subject to the provisions of Ark. Const. Amend. 7 could not be amended 44 days after certification of the election to allege the issue had been submitted to the voters under an improper ballot title, because election contests are not subject to ARCP 15(c), and, under this section, the contestant is limited to the grounds set out in his original complaint, and those grounds cannot be enlarged by subsequent amendment not made within the time required by the statute for contesting. *Hanson v. Garland County Election Comm'n*, 289 Ark. 367, 712 S.W.2d 288 (1986).

14-38-114. Preservation of papers.

The Secretary of State shall receive and preserve in his office all papers transmitted to him in relation to the organization, incorporation, or annexation of territory to cities and towns.

History. Acts 1875, No. 1, § 85, p. 1; C. A.S.A. 1947, § 19-108. & M. Dig., § 7469; Pope's Dig., § 9502;

CHAPTER 39

SURRENDER OF CHARTER BY CITY OF THE SECOND CLASS OR INCORPORATED TOWN

SECTION.

- 14-39-101. Authority generally.
- 14-39-102. Revocation due to inactivity.
- 14-39-103. Surrender and repeal of charter.
- 14-39-104. Appointment of receiver and back-tax collector.
- 14-39-105. Duties of receiver, etc.
- 14-39-106. Reports and collections by receiver, etc.

SECTION.

- 14-39-107. Compensation of receiver, etc.
- 14-39-108. Proceedings to collect revenue due.
- 14-39-109. Filing of claims — Appeals.
- 14-39-110. Payment of funds collected.
- 14-39-111. Disposition of private property.

Effective Dates. Acts 1883, No. 22, § 12: effective on passage.

Acts 1957, No. 224, § 2: Mar. 12, 1957. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that there are several inactive incorporated towns in this State, that the keeping of records of such inactive incorporated towns is an unnecessary expense to the State of Arkansas, that this Act eliminates

this unnecessary expense by revoking the Charters of such inactive towns, and that its immediate effect is needed in order to authorize the elimination of such expense immediately. Therefore, an emergency is declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and welfare, shall take effect and be in full force from and after the date of its passage and approval."

RESEARCH REFERENCES

- Am. Jur.** 56 Am. Jur. 2d, Mun. Corp., § 91.
- C.J.S.** 62 C.J.S., Mun. Corp., § 101 et seq.
- 87 C.J.S., Towns, § 17.

14-39-101. Authority generally.

The charters, and all the amendments thereto, of all municipal corporations within this state designated as cities of the second class and incorporated towns may be surrendered, all offices held thereunto abolished, and the territory and inhabitants thereof remanded to the government of this state in the manner provided in this chapter.

History. Acts 1883, No. 22, § 1, p. 33; C. & M. Dig., § 7638; Pope's Dig., § 9760; A.S.A. 1947, § 19-501.

14-39-102. Revocation due to inactivity.

(a)(1) The charter of any incorporated town or city of the second class that has been inactive as an incorporated place for five (5) years or longer shall be revoked by order of the county court of the county in which the incorporated town or city of the second class is located.

(2) Upon petition by the prosecuting attorney of the county, the county court of the county may make and enter an order revoking any charter of an incorporated town or city of the second class upon a finding that the town or city will no longer be in existence.

(b) When the county court revokes the charter of any incorporated town or city of the second class, the court shall order the clerk of the court to make out and certify under the official seal of the clerk, a transcript of the order, which the clerk shall forward to the Secretary of State, to be kept on file in the office of the Secretary of State. The clerk shall also forward a copy to the Arkansas History Commission.

History. Acts 1883, No. 22, § 2, p. 33; C. & M. Dig., §§ 7639-7642; Pope's Dig., §§ 9761-9764; Acts 1957, No. 224, § 1; 1983, No. 185, § 1; A.S.A. 1947, § 19-502.

Cross References. Arkansas History Commission, § 13-3-101 et seq.

CASE NOTES**In General.**

The 1957 amendment of this section expressly repealed the previous provision (Acts 1883, No. 22, § 2) governing surren-

der of town charters and now sets out the exclusive procedure for such surrender. *Simons v. Davis*, 263 Ark. 574, 566 S.W.2d 730 (1978).

14-39-103. Surrender and repeal of charter.

(a)(1) When the county court shall have made the order mentioned in § 14-39-102, the charter, and all amendments thereto, of any such municipal corporation shall be deemed to be surrendered and repealed and shall then cease to exist.

(2) The population and territory thereof theretofore governed under and by virtue of the charter and the amendments thereto shall then be resolved back into the body of the state.

(3) All offices theretofore held under, and by force of, the charter and the amendments thereof shall be abolished.

(4) All power of taxation, in any form whatever, theretofore vested in, or exercised by, the authorities of such municipal corporation by virtue of its charter and the amendments thereto shall then be forever withdrawn and reserved to the General Assembly.

(5)(A) The public buildings, squares, promenades, wharves, streets, alleys, parks, fire engines, hose and carriages, horses and wagons, engine houses, engineer instruments, and all other real, personal, or mixed property theretofore used or held by the municipal corporation for municipal purposes shall be transferred to the custody and control of the state, to remain public property as it has always been for the uses to which the property has been applied.

(B) The county court of the counties, in which the extinct municipal corporations, respectively, were situated, shall take immediate possession of and control the same until otherwise provided by law.

(b) From and after the surrender and repeal of the charter as provided in this section, no person holding office under and by virtue of the charter of such municipal corporation shall exercise or attempt to exercise any of the powers or functions of that office.

History. Acts 1883, No. 22, § 3, p. 33;
C. & M. Dig., §§ 7643, 7644; Pope's Dig.,
§§ 9765-9766; A.S.A. 1947, § 19-503.

14-39-104. Appointment of receiver and back-tax collector.

(a) As to all municipal corporations in this state whose charters may be surrendered and repealed under the provisions of this chapter, the Governor of the state shall appoint an officer for the extinct corporations, respectively, to be known as a receiver and back-tax collector.

(b) The receiver and back-tax collector shall take the oath required of other collectors of the public revenue and shall give bond with good sureties, to be approved by the county court of the county in which the extinct corporations were situated, in such sum as the court may prescribe.

History. Acts 1883, No. 22, § 4, p. 33;
C. & M. Dig., § 7645; Pope's Dig., § 9767;
A.S.A. 1947, § 19-504.

Cross References. Self-Insured Fidelity Bond Program, § 21-2-701 et seq.

14-39-105. Duties of receiver, etc.

(a) The receiver and back-tax collector shall, as soon as appointed and qualified, enter upon the duties of his office.

(b) It shall be the receiver and back-tax collector's duty, and he is empowered, to take possession of all books, papers, and documents pertaining to the assessment and collection of taxes embraced by this chapter. He shall also take possession of all the private property, if any, belonging to the extinct corporation, respectively.

History. Acts 1883, No. 22, § 5, p. 33;
C. & M. Dig., § 7646; Pope's Dig., § 9768;
A.S.A. 1947, § 19-505.

14-39-106. Reports and collections by receiver, etc.

(a) Every six (6) months the receiver and back-tax collector shall make to the circuit court in chancery, in the county in which the extinct corporation was situated, a full, clear, and complete statement showing all taxes collected and settled, and all in his hands that remain to be collected and settled.

(b)(1) The receiver and back-tax collector, at the end of each month, shall pay into the Treasury of the State the whole sum collected or received by him, less his compensation.

(2) He shall distinguish, in making such payments, the respective sources from which the moneys paid in are derived, showing what is collected from taxes for general purposes and what is collected for special purposes, and designating the particular or special purpose, so that the moneys may be kept separate in the State Treasury in order that the State Treasurer may pay them according to any lien, priority or equity, which may be declared by any court touching any of the funds in favor of any creditor or class of creditors.

History. Acts 1883, No. 22, § 6, p. 33;
C. & M. Dig., §§ 7647, 7648; Pope's Dig.,
§§ 9769, 9770; A.S.A. 1947, § 19-506.

14-39-107. Compensation of receiver, etc.

The receiver and back-tax collector shall receive such compensation for his services as shall be fixed by the county court of the county in which the extinct corporation was situated.

History. Acts 1883, No. 22, § 11, p. 33;
C. & M. Dig., § 7661; Pope's Dig., § 9783;
A.S.A. 1947, § 19-511.

14-39-108. Proceedings to collect revenue due.

(a) For the purpose of collecting the revenue embraced in the provisions of this chapter, the receiver and back-tax collector is empowered and authorized to file a general creditors' bill in the name of the state, in behalf of all creditors, against all the delinquent taxpayers who owed taxes to the extinct corporation at the time of the surrender or repeal of its charter, which shall be filed in the circuit court in chancery, held in and for the county in which the extinct corporation was situated.

(b)(1) All the delinquents in any one (1) county shall be embraced in one (1) summons to answer.

(2) For the issuance of the summons, the clerk shall receive a fee of five cents (5¢) for each defendant named in the summons, except for the first, and for that the fee allowed by law in other cases. However, he shall not receive a fee exceeding twenty dollars (\$20.00) for such summons.

(3) The sheriff, for serving the summons, shall receive for each defendant ten cents (10¢), except for the first, and for that the fee allowed for like services in other cases.

(c) Publication for nonresidents shall embrace in the same publication, if practicable, all nonresident defendants, the object being to make one (1) proceeding embrace the whole taxes of any one of such extinct corporations.

(d) All pending suits in favor of any of the extinct corporations are to be revived in the name of the state and consolidated with the general proceedings provided for in this chapter and when so consolidated shall form part of the general proceeding.

(e)(1) The court in which the proceeding may be instituted shall have power to settle and adjust all equities, priorities, and liens and to give all relief, both to the defendants and creditors, that might be given if there were as many separate suits as there are creditors and delinquent taxpayers.

(2)(A) The court shall have power to enforce all liens upon property for the payment of the taxes and to order and make all sales of property necessary to the collection of the taxes.

(B) The taxes embraced by this chapter, and which it provides for, are all taxes imposed by extinct municipal corporations up to the time of the surrender or repeal of their respective charters, and none other.

History. Acts 1883, No. 22, § 7, p. 33;
C. & M. Dig., §§ 7649-7654; Pope's Dig.,
§§ 9771-9776; A.S.A. 1947, § 19-507.

14-39-109. Filing of claims — Appeals.

(a) Publication shall make all creditors parties, with the right to relief as fully as if especially named. At any time, they may file with the clerks of the courts their claims, or attested copies, retaining the original, if they desire. However, the court may order that the original be produced and placed in the custody of the clerk.

(b)(1) The simple filing of claims, respectively, attested by the affidavit of the owner or his agent or attorney shall be proof of the claims in common form and, if not contested, entitles them to payment pro rata.

(2) For administering the oath in proving the claims, in common form and, filing them, the clerk shall receive the sum of ten cents (10¢) to be paid at the time of making the oath and filing the claim.

(c)(1) If any creditor or receiver and back-tax collector shall desire to contest the validity, in whole or in part, of any claim filed in common form, he may do so in a summary way, in the progress of the cause.

(2)(A) The opposing parties in these contests shall reduce to writing the facts that are necessary to their determination and file them.

(B) When filed, they shall become part of the record, and the court shall have power, upon motion and in a summary way, to hear and determine all questions of priority of payment in the progress of the cause.

(d)(1) When any party is dissatisfied with the decision of any litigated question, he may have the question reheard, upon appeal or writ of error in the Supreme Court. However, only so much of the record as pertains to that particular litigation shall form the transcript and record for the appellate court.

(2) The costs shall be paid by the parties to such appeal as the appellate court may direct unless the receiver and back-tax collector is a party to the litigation on behalf of creditors generally; in that case the costs may, if the appellate court thinks proper, be charged to the whole or to some particular fund, as right and justice may require.

History. Acts 1883, No. 22, § 8, p. 33;
C. & M. Dig., §§ 7655-7658; Pope's Dig.,
§§ 9777-9780; A.S.A. 1947, § 19-508.

14-39-110. Payment of funds collected.

Funds collected under this chapter shall be paid out by the Treasurer of State from time to time to those entitled thereto and in such manner as the circuit court in chancery may adjudge and decree, on the warrant of the receiver and back-tax collector, countersigned by the judge of the court.

History. Acts 1883, No. 22, § 10, p. 33;
C. & M. Dig., § 7660; Pope's Dig., § 9782;
A.S.A. 1947, § 19-510.

14-39-111. Disposition of private property.

(a) The receiver and back-tax collector shall make to the circuit court in chancery a full and complete statement of all the private property, if any, belonging to the extinct corporations, respectively. All such property shall be considered by the court as a part of the subject matter of the creditor's bill.

(b) The court shall make all orders and decrees as may be deemed necessary and proper for the sale thereof and shall decree the application of the proceeds of the sale to the payment of the debts of the extinct corporations, respectively.

History. Acts 1883, No. 22, § 9, p. 33;
C. & M. Dig., § 7659; Pope's Dig., § 9781;
A.S.A. 1947, § 19-509.

CHAPTER 40

ANNEXATION, CONSOLIDATION, AND DETACHMENT BY MUNICIPALITIES

SUBCHAPTER.

1. GENERAL PROVISIONS [RESERVED.]
2. ANNEXATION GENERALLY.
3. MUNICIPAL ANNEXATION OF CONTIGUOUS LANDS.
4. ANNEXATION OF LANDS IN ADJOINING COUNTY.
5. ANNEXATION OF SURROUNDED LAND.
6. ANNEXATION PROCEEDINGS BY ADJOINING LANDOWNERS.
- 7-11. [RESERVED.]
12. CONSOLIDATION OF MUNICIPALITIES.
- 13-17. [RESERVED.]
18. DETACHMENT OF TERRITORY GENERALLY.
19. DETACHMENT OF UNSUITABLE TERRITORY.

A.C.R.C. Notes. References to “this chapter” in subchapters 1, 3-19, and §§ 14-40-201 to 14-40-204 may not apply to §§ 14-40-205 and 14-40-401 which were enacted subsequently.

RESEARCH REFERENCES

ALR. Right of one governmental subdivision to challenge annexation proceedings by another such subdivision. 17 ALR 5th 195.

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., § 50 et seq.

C.J.S. 62 C.J.S., Mun. Corp., § 38 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — ANNEXATION GENERALLY

SECTION.	SECTION.
14-40-201. Territory contiguous to county seat.	14-40-204. Annexation of city-owned parks and airports.
14-40-202. Territory annexed in different judicial district.	14-40-205. Territory within one-half mile of state park.
14-40-203. Assignment of annexed territory to ward.	

Effective Dates. Acts 1887, No. 14, § 2: effective on passage.

Acts 1939, No. 401, § 2: became law without Governor’s signature, Mar. 30, 1939. Emergency clause provided: “This act being necessary for the public peace, health and safety, an emergency is declared to exist and this act shall be in force and effect from and after its passage.”

Acts 1963, No. 88, § 3: Feb. 27, 1963.

Emergency clause provided: “It being found that the lack of definite jurisdiction over annexation in counties to which this Act is applicable is creating dangerous hazards for lack of adequate fire protection and water supply, and is threatening to hamper the industrial growth of such counties, an emergency is hereby declared to exist and this Act shall be effective from and after its passage and approval.”

14-40-201. Territory contiguous to county seat.

In counties having two (2) levying courts or in counties having a population of not less than thirteen thousand two hundred fifty (13,250) and not more than fourteen thousand (14,000) according to the most recent federal census where territory contiguous to the county seat needs fire, police, water, and sanitary services of that town to protect the public health, safety, and convenience of inhabitants of both the town and its contiguous territory, the council of any such incorporated town or city of the second class shall have the power to annex the territory contiguous thereto by ordinance, passed and published in the manner provided by law for the passage and publication of ordinances.

History. Acts 1939, No. 401, § 1; 1941, No. 469, § 1; A.S.A. 1947, § 19-308.

CASE NOTES

Cited: *Gay v. City of Springdale*, 298 Ark. 554, 769 S.W.2d 740 (1989).

14-40-202. Territory annexed in different judicial district.

(a) In any county in this state in which there is more than one (1) judicial district of its county court with a separate levying or quorum court in and for each of the districts, lands lying in one of the districts may be annexed to a city or incorporated town lying in another of the districts, and be and become a part of the city or incorporated town, if otherwise the lands may be annexed, in the manner provided by law.

(b) For the purposes of this section, the county court of the district in which the city or incorporated town is located is vested with jurisdiction over that portion of the county where lie the lands to be annexed in the hearing and determination of the annexation.

(c) Appeals from any orders therein of the county court shall be taken to the circuit court of the same district, all as in the manner provided by law.

(d) In the event of any such annexation, any lands so annexed shall thereafter be and become, for all purposes provided by law, a part of the same district in which the city or incorporated town is located, and thereafter the county, circuit, probate, chancery, and municipal courts of the district shall have and exercise jurisdiction over the annexed lands, and the residents thereof, the same as if the lands had been located in the district when it was created.

History. Acts 1963, No. 88, § 1; A.S.A. 1947, § 19-328.

CASE NOTES

Constitutionality.

This section satisfies Ark. Const. Amend. 14 as it makes reasonable classification and legislation relating to admin-

istration of justice and is not local. *Smalley v. City of Ft. Smith*, 239 Ark. 39, 386 S.W.2d 944 (1965).

14-40-203. Assignment of annexed territory to ward.

(a) When any territory shall have been annexed to any incorporated town or city, it may be, and it is, the duty of the town or city council of the incorporated town or city to attach and incorporate the annexed territory to and in one (1) or more wards of the incorporated town or city lying adjacent thereto, which may be done by ordinance duly passed by a majority of the members elected to the council.

(b) The territory so assigned and attached to a ward shall immediately be considered and become a part thereof as fully as any other part of it.

History. Acts 1887, No. 14, § 1, p. 17;
C. & M. Dig., § 7470; Pope's Dig., § 9503;
A.S.A. 1947, § 19-309.

14-40-204. Annexation of city-owned parks and airports.

(a)(1) From and after the passage of this subsection, all city-owned parks and city-owned airports in cities of populations between forty thousand (40,000) and eighty thousand (80,000) in counties whose population is one hundred forty thousand (140,000) or over are annexed to the cities owning the parks and airports.

(2) This subsection shall apply to other cities and counties in the future meeting the population requirements, as shown by the federal census.

(b) All city-owned parks owned by cities in this state having a population of not less than six thousand (6,000) and not more than six thousand four hundred fifty (6,450) and located in counties having a population of not less than twenty-two thousand six hundred (22,600) and not more than twenty-two thousand eight hundred (22,800), according to the most recent federal census, are annexed to the cities owning the parks.

History. Acts 1951, No. 295, § 1; 1959, No. 49, § 1; A.S.A. 1947, §§ 19-323, 19-324.

1951, No. 295, was signed by the Governor on March 19, 1951, and became effective on June 7, 1951.

Publisher's Notes. In reference to the term "the passage of this subsection," Acts

14-40-205. Territory within one-half mile of state park.

None of the annexation laws of this state shall have any application in the area within one-half ($\frac{1}{2}$) mile of the boundaries of any state park located in a county with a population in excess of three hundred and fifty thousand (350,000) persons unless the annexation is approved by a majority of the voters residing within such one-half ($\frac{1}{2}$) mile area, or the area to be annexed is on the opposite side of a navigable river from the state park. Any order of the county court issued in contradiction hereof is void, if the order is issued after August 1, 1997.

History. Acts 1997, No. 1216, § 1.

A.C.R.C. Notes. References to "this chapter" in subchapters 1, 3-19, and

§§ 14-40-201 to 14-40-204 may not apply to this section which was enacted subsequently.

SUBCHAPTER 3 — MUNICIPAL ANNEXATION OF CONTIGUOUS LANDS

SECTION.

14-40-301. Construction.

14-40-302. Authority — Exceptions.

14-40-303. Annexation ordinance — Election — Procedures.

SECTION.

14-40-304. Judicial review.

Effective Dates. Acts 1971, No. 298, § 6: emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that many cities and towns have grown beyond their legal boundaries and for the betterment of the entire State a modernized annexation law is drastically needed. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate protection of the public peace, health and safety, shall take effect immediately upon its passage and approval." Approved March 16, 1971.

Acts 1975, No. 309, § 5: became law without Governor's signature, Mar. 4, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that many cities and towns have grown beyond their legal boundaries and for the betterment of the entire State

a modernized annexation law is drastically needed. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate protection of the public peace, health and safety, shall take effect immediately upon its passage and approval."

Acts 1975, No. 904, § 3: Apr. 7, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that many cities and towns have grown beyond their legal boundaries and for the betterment of the entire State a modernized annexation law is drastically needed. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate protection of the public peace, health and safety shall take effect immediately upon its passage and approval."

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

Owen, Note: Local Government — Municipal Corporation — Annexation Invalidation, 2 UALR L.J. 105.

Hardin, Survey of Arkansas Law: Public Law, 2 UALR L.J. 281.

Arkansas Law Survey, Scroggins, Property, 9 UALR L.J. 199.

CASE NOTES

Constitutionality.

This subchapter is not unconstitutional because the burden of going forward with proof is placed upon property owners ob-

jecting to annexation. *Floyd v. Town of Mayflower*, 256 Ark. 992, 511 S.W.2d 490 (1974).

14-40-301. Construction.

The provisions of this subchapter shall not be construed to give any municipality the authority to annex any portion of another city or incorporated town.

History. Acts 1971, No. 298, § 4; A.S.A. 1947, § 19-307.4.

CASE NOTES

Cited: *Gay v. City of Springdale*, 298 Ark. 554, 769 S.W.2d 740 (1989).

14-40-302. Authority — Exceptions.

(a) By vote of two-thirds ($\frac{2}{3}$) of the total number of members making up its governing body, any municipality may adopt an ordinance to annex lands contiguous to the municipality if the lands are any of the following:

(1) Platted and held for sale or use as municipal lots;

(2) Whether platted or not, if the lands are held to be sold as suburban property;

(3) When the lands furnish the abode for a densely settled community or represent the actual growth of the municipality beyond its legal boundary;

(4) When the lands are needed for any proper municipal purposes such as for the extension of needed police regulation; or

(5) When they are valuable by reason of their adaptability for prospective municipal uses.

(b)(1) Contiguous lands shall not be annexed when they either:

(A) Have a fair market value at the time of the adoption of the ordinance of lands used only for agricultural or horticultural purposes and the highest and best use of the lands is for agricultural or horticultural purposes; or

(B) Are lands upon which a new community is to be constructed with funds guaranteed in whole or in part by the federal government under Title IV of the Housing and Urban Development Act of 1968 or under Title VII of the Housing and Urban Development Act of 1970.

(2) Any person, firm, corporation, partnership, or joint venturer desiring to come within this exclusion must have received from the Department of Housing and Urban Development a letter of preliminary commitment to fund the new community under one (1) of the federal acts.

(3) If any lands are annexed which are being used exclusively for agricultural purposes, the lands may continue to be used for such purposes so long as the owner desires and the lands shall be assessed as agricultural lands.

History. Acts 1971, No. 298, § 1; 1975, No. 309, § 1; 1975, No. 904, § 1; A.S.A. 1947, § 19-307.1.

U.S. Code. Title IV of the Housing and Urban Development Act of 1968, referred to in this section, has been largely re-

pealed. A portion of the title is codified as 12 U.S.C. §§ 371 and 1464. Title VII of the Housing and Urban Development Act of 1970, referred to in this section, is codified as 12 U.S.C. §§ 371 and 1464, and 42 U.S.C. § 4501 et seq.

RESEARCH REFERENCES

Ark. L. Notes. Watkins, Procedural Issues in an Annexation Case: A Dissenting

Opinion to Gay v. City of Springdale, 1986 Ark. L. Notes 55.

CASE NOTES

ANALYSIS

Agricultural or horticultural purposes.
Criteria generally.
Evidence.
Proper municipal purposes.

Agricultural or Horticultural Purposes.

This section, as amended by Acts 1975, No. 309, providing that contiguous lands shall not be annexed when they have a fair market value of land used for agricultural purposes and the best use of the land is for agricultural purposes, deals with a substantive matter and should not be given a retroactive effect. *Herrod v. City of N. Little Rock*, 260 Ark. 890, 545 S.W.2d 620 (1977).

The prohibition against annexing lands being used for agricultural or horticultural purposes is not absolute; such lands may be annexed to a municipality if the highest and best use of those lands is for something other than agriculture or horticulture and one of the five criteria of subsection (a) is met. *Gay v. City of Springdale*, 287 Ark. 55, 696 S.W.2d 723 (1985).

The prohibition against annexing agricultural lands is no longer absolute; the lands may be annexed if their highest and best use is for a purpose other than agriculture. *Chappell v. City of Russellville*, 288 Ark. 261, 704 S.W.2d 166 (1986).

The fact that the land is agricultural and the owner does not want it developed does not determine its fate as to annexation; the owner will not have to abandon its use, and its assessment for taxation shall be as agricultural land. *Lee v. City of Pine Bluff*, 289 Ark. 204, 710 S.W.2d 205 (1986).

Criteria Generally.

This section is disjunctive, and annexation of land is proper when the proof sufficiently complies with any one of its conditions. *Holmes v. City of Little Rock*, 285 Ark. 296, 686 S.W.2d 425 (1985); *Gay v. City of Springdale*, 298 Ark. 554, 769 S.W.2d 740 (1989).

It was permissible to annex a tract of land where that tract was more valuable for city purposes than for agriculture, even if one part of the tract was more valuable for farming purposes than for city purposes where: (1) there were a variety of land uses in the tract; (2) access to the tract existed by city streets; (3) city utilities were available; (4) a municipal airport commission would purchase part of the tract; (5) the tract was surrounded on three sides by present city boundaries and on the fourth side by the Arkansas River; (6) the tract was substantially urbanized; and (7) the biggest part of the tract consisted of platted residential development. *Holmes v. City of Little Rock*, 285 Ark. 296, 686 S.W.2d 425 (1985).

The five criteria listed in subsection (a) are disjunctive, and annexation may be proper when any one of the five conditions is met. *Gay v. City of Springdale*, 287 Ark. 55, 696 S.W.2d 723 (1985).

The lands sought to be annexed must meet one of the five criteria in this section; if a part of the proposed area does not meet one of the requirements, then the annexation of the entire area is voided in toto. *Chappell v. City of Russellville*, 288 Ark. 261, 704 S.W.2d 166 (1986).

Annexation is not prohibited simply because a tract is rather rugged or heavily wooded with sparse population; the value of the land is derived from its actual and prospective use for city purposes. *Chappell v. City of Russellville*, 288 Ark. 261, 704 S.W.2d 166 (1986).

Evidence.

A majority of electors voting in favor of annexation makes a prima facie case for annexation, and the burden rests on those objecting to produce sufficient evidence to defeat the prima facie case. *Lee v. City of Pine Bluff*, 289 Ark. 204, 710 S.W.2d 205 (1986).

Proper Municipal Purposes.

Where the trial court found that much of the lands represented the actual growth of the city beyond its legal boundary, that

the lands were needed for extension of police and fire protection, that the lands were valuable by reason of their adaptability for prospective municipal purposes, and that, although some acreage was presently used for agricultural purposes, the highest and best use of these lands was for purposes other than their present use, the findings were not clearly wrong and annexation was proper. *Chappell v. City of Russellville*, 288 Ark. 261, 704 S.W.2d 166 (1986).

A city's proposed annexation was an honest effort to extend its boundaries to encompass the actual growth of the city and land needed for municipal purposes as defined by law; however, the Supreme

Court will not recognize annexation proposals that are essentially land grabs beyond the actual growth of the city with no serious goal of responsible land use planning. *Lee v. City of Pine Bluff*, 289 Ark. 204, 710 S.W.2d 205 (1986).

Land in a flood plain is not excluded from consideration for annexation. *Lee v. City of Pine Bluff*, 289 Ark. 204, 710 S.W.2d 205 (1986).

Cited: *White v. Loring*, 274 Ark. 272, 623 S.W.2d 837 (1981); *Magruder v. Arkansas Game & Fish Comm'n*, 287 Ark. 343, 698 S.W.2d 299 (1985); *Duennenberg v. City of Barling*, 309 Ark. 541, 832 S.W.2d 237 (1992).

14-40-303. Annexation ordinance — Election — Procedures.

(a) The annexation ordinance shall:

(1) Contain an accurate description of the lands desired to be annexed;

(2) Include a schedule of the services of the annexing municipality that will be extended to the area within three (3) years after the date the annexation becomes final; and

(3) Fix the date for the election provided in this section.

(b)(1)(A) The annexation ordinance shall not become effective until the question of annexation is submitted to the qualified electors of the annexing municipality and of the area to be annexed at the next general election or at a special election. The special election shall be conducted no earlier than sixty (60) days after the date of enactment of the ordinance.

(B)(i) If a majority of the qualified electors voting in the election shall vote for the annexation, the county clerk shall, no later than seven (7) days following the election, certify the election results, record the same, along with the description and a map of the annexed area, in the county records, and file a certified copy thereof with the Secretary of State.

(ii) The annexation shall be effective, and the lands annexed shall be included within the corporate limits of the annexing municipality thirty (30) days following the date of recording and filing of the description and map, as provided in this section, or, in the event an action is filed with the circuit court as provided in § 14-40-304 on the date the judgment of the court becomes final.

(2) If a majority of the qualified electors voting on the issue at the election vote against the annexation, the annexation ordinance shall be null and void.

(c)(1)(A) The city clerk shall certify two (2) copies of the annexation ordinance and a plat or map of the area to be annexed and convey one (1) copy to the county clerk and one (1) copy to the county election commission at least sixty (60) days before the election.

(B)(i) No later than forty-five (45) days prior to the election, the city shall identify all persons who reside within the area proposed to be annexed, and the county clerk shall assist the city in determining the names and addresses of all qualified electors residing within that area.

(ii) The failure to identify all persons residing within the area proposed to be annexed or the failure to determine the names and addresses of all qualified electors residing within that area shall not invalidate or otherwise affect the results of the election.

(C) All of the qualified electors residing within the territory to be annexed shall be entitled to vote in the election.

(D) The city clerk shall give notice of the election by publication by at least one (1) insertion in some newspaper having general circulation in the city.

(2)(A) The county clerk shall give notice of the voter registration deadlines at least twenty (20) days before the election by ordinary mail to those persons whose names and addresses are on the list provided by the city clerk.

(B) The county clerk shall prepare a list by precinct of all those qualified electors residing within the area to be annexed who are qualified to vote in that precinct and furnish that list to the election officials at the time the ballot boxes are delivered.

(3) If the county clerk or the county election commission shall fail to perform any duties required of it, then any interested party may apply for a writ of mandamus to require the performance of the duties, but the failure to perform the duties shall not void the annexation election unless a court finds that the failure to perform the duties substantially prejudiced an interested party.

(d) If the annexation is approved and becomes final, the governing body of the city shall, by ordinance, as soon as practical after the annexation, attach and incorporate such annexed territory to and in one (1) or more wards of the city lying adjacent thereto, and the territory so assigned and attached to a ward shall thereafter be considered and become a part thereof as fully as any other part of the city.

(e) From the map or plat provided by city ordinance of the wards assigned, the county clerk shall proceed to ascertain and determine the voters' proper precinct and shall enter the same upon the voter registration records of those inhabitants of the territory so annexed and give notice of that change within thirty (30) days after the adoption of the city ordinance assigning the territory to wards.

(f)(1) In the event that within thirty (30) days of the date that one (1) city calls for an annexation election, another city calls for an annexation election on all or part of the same land proposed to be annexed by the first city, then both annexation elections shall be held; provided that the second city must call for its annexation election to be held within thirty (30) days before or after the holding of the first city's election.

(2) If the annexation election held first is approved by the voters, the results of it shall be stayed until the second annexation election is held.

(A) If only one (1) of the annexation elections is approved by the voters, then the city which called that election shall proceed with the annexation of the land.

(B) If both annexation elections are approved by the voters, then a third election shall be held three (3) weeks after the second annexation election.

(i) Only the residents of the area proposed to be annexed by both cities shall vote in the third election.

(ii) The issue on the ballot in the third election shall be into which of the two (2) cities the residents of the area want to be annexed.

(iii) The area shall be annexed into the city receiving the most votes in the third election.

(iv) In the event of a tie vote in the third election, the area shall be annexed to the city which, in the first or second election, had the highest percentage vote in favor of the annexation.

(3) If the city which does not get to annex the area voted on by both cities included land in its annexation election other than the land voted on by both cities, then that land shall be annexed into such city if it is still contiguous to such city after the other land is annexed to the other city, but such land shall remain part of the county if it is not so contiguous.

History. Acts 1971, No. 298, § 2; 1975, No. 309, § 2; A.S.A. 1947, § 19-307.2; Acts 1991, No. 725, § 1; 1993, No. 356, § 1.

Amendments. The 1993 amendment deleted "at the election" preceding "a ma-

jority" in (b)(1)(B)(i); substituted "who" for "which" following "area to be annexed" in (c)(2)(B); added (c)(3); added (f); and made minor stylistic changes throughout the section.

CASE NOTES

ANALYSIS

Description of lands.

Effective date of annexation.

Filing election returns.

Schedule of services.

Description of Lands.

Annexation proceedings based on a description of land that describes only a line and does not encircle any geographical area are invalid. *City of N. Little Rock v. Garner*, 256 Ark. 1025, 511 S.W.2d 656 (1974).

Where the city described all the land sought to be annexed by metes and bounds as "the area included in the following description not currently in the City" and a map was referred to in the ordinance and was duly filed with the circuit clerk after the election, the description of the property to be annexed was proper

and sufficient. *Lee v. City of Pine Bluff*, 289 Ark. 204, 710 S.W.2d 205 (1986).

Although subdivision (b)(1)(B)(i) required city to file a description and map of annexed area and correct election results with the county clerk and Secretary of State, city's failure to file such matters with the Secretary of State did not toll the 30-day requirement to bring suit under § 14-40-304; subdivision (b)(1)(B)(ii) provides that a municipality's annexation shall be effective 30 days following its filing the description and map of the annexed property with only the county clerk. *City of Springdale v. Town of Bethel Heights*, 311 Ark. 497, 845 S.W.2d 1 (1993).

Effective Date of Annexation.

Residents of an area in the process of being annexed to a city do not have the right to vote in a municipal bond election until after the annexation becomes effec-

tive and, accordingly, where a circuit court order upholding a contested annexation was not signed until nine days after the bond election, such election was valid despite the fact that residents of the annexed area did not vote therein. *Tanner v. City of Little Rock*, 261 Ark. 573, 550 S.W.2d 177 (1977).

Where a city collected franchise taxes from residents of annexed area during pendency of appeals from circuit court's final order holding annexation valid, the franchise taxes were not illegal exactions that had to be refunded since, pursuant to this section, the annexation was effective on the date of final judgment; moreover, because no supersedeas or stay was issued under ARAP Rule 8 and ARCP Rule 62, the city had the authority and responsibility to furnish services to the annexed area and collect franchise taxes during pendency of the appeal. *Jackson v. City of Little Rock*, 274 Ark. 51, 621 S.W.2d 852 (1981).

Filing Election Returns.

Nothing in this section requires the filing of correct election returns with the

Secretary of State. *City of Springdale v. Town of Bethel Heights*, 311 Ark. 497, 845 S.W.2d 1 (1993).

Schedule of Services.

The requirement of a schedule of services is intended to assist voters by furnishing them with detailed information about the annexation proposal. *Carter v. City of Sherwood*, 263 Ark. 616, 566 S.W.2d 746 (1978).

Where a city ordinance calling an annexation election merely stated that the city committed itself to the extension into the annexed area "of public services now available to the residents of [the city] ... and such services shall include all city services," the ordinance was inadequate under this section. *Carter v. City of Sherwood*, 263 Ark. 616, 566 S.W.2d 746 (1978).

Cited: *Pennington v. City of Sherwood*, 304 Ark. 362, 802 S.W.2d 456 (1991).

14-40-304. Judicial review.

(a) If it is alleged that the area proposed to be annexed does not conform to the requirements and standards prescribed in § 14-40-302, a legal action may be filed in the circuit court of the county where the lands lie, within thirty (30) days after the election, to nullify the election and to prohibit further proceedings pursuant to the election.

(b) In any such action filed in the circuit court of the county where the lands lie, the court shall have jurisdiction and the authority to determine whether the procedures outlined in this subchapter have been complied with and whether the municipality has used the proper standards outlined in § 14-40-302 in determining the lands to be annexed.

History. Acts 1971, No. 298, §§ 2, 3; 1975, No. 309, §§ 2, 3; A.S.A. 1947, §§ 19-307.2, 19-307.3.

CASE NOTES

ANALYSIS

In general.
Appeals.
Enabling ordinance.
Time limitation.

In General.

Election contests have no common law existence; they are solely the creatures of constitution or statute. *Duennenberg v. City of Barling*, 309 Ark. 541, 832 S.W.2d 237 (1992).

Appeals.

The order of a circuit court in annexation cases will be upheld unless it is clearly erroneous. *Holmes v. City of Little Rock*, 285 Ark. 296, 686 S.W.2d 425 (1985).

Enabling Ordinance.

Nothing in this section or in this chapter requires that the enabling ordinance be identified or specifically challenged. *Duennenberg v. City of Barling*, 309 Ark. 541, 832 S.W.2d 237 (1992).

Where original complaint, which was timely, was not deficient in stating a cause of action, later amendment, which merely corrected an obvious error in the designation of the particular ordinance, was not essential to that cause of action. *Duennenberg v. City of Barling*, 309 Ark. 541, 832 S.W.2d 237 (1992).

Time Limitation.

Where neither appellants nor others filed suit within 30 days of the annexation

election, appellants' attempt to raise such an issue in a later collateral proceeding failed. *City of Springdale v. Town of Bethel Heights*, 311 Ark. 497, 845 S.W.2d 1 (1993).

Although § 14-40-303(b)(1)(B)(i) required city to file a description and map of annexed area and correct election results with the county clerk and Secretary of State, city's failure to file such matters with the Secretary of State did not toll the 30-day requirement to bring suit under this section; § 14-40-303(b)(1)(B)(ii) provides that a municipality's annexation shall be effective 30 days following its filing the description and map of the annexed property with only the county clerk. *City of Springdale v. Town of Bethel Heights*, 311 Ark. 497, 845 S.W.2d 1 (1993).

SUBCHAPTER 4 — ANNEXATION OF LANDS IN ADJOINING COUNTY

SECTION.

14-40-401. Authority.

Publisher's Notes. Former subchapter 4, concerning annexation of lands in adjoining county, was repealed by Acts 1995, No. 555, § 1. The former subchapter was derived from the following sources:

14-40-401. Acts 1967, No. 651, § 1; A.S.A. 1947, § 19-329.

14-40-402. Acts 1967, No. 651, § 2; A.S.A. 1947, § 19-330.

14-40-403. Acts 1967, No. 651, § 3; A.S.A. 1947, § 19-331.

14-40-404. Acts 1967, No. 651, § 4; A.S.A. 1947, § 19-332.

14-40-405. Acts 1967, No. 651, § 5; A.S.A. 1947, § 19-333.

14-40-406. Acts 1967, No. 651, § 6; A.S.A. 1947, § 19-334.

14-40-407. Acts 1967, No. 651, § 7; A.S.A. 1947, § 19-335.

14-40-408. Acts 1967, No. 651, § 8; A.S.A. 1947, § 19-336.

14-40-401. Authority.

(a) The General Assembly finds that there are areas within adjoining counties that are so necessary to the satisfactory conducting of a city's business that there is a need to annex land lying in the adjoining county into the city. This law will aid the residents to receive needed services to improve the quality of life in the unincorporated area.

(b) Any lands contiguous to a municipality having a population of seventy-five thousand (75,000) or less, although located in an adjoining

county, may become annexed to the municipality in the manner provided in this chapter.

History. Acts 1995, No. 1286, §§ 1, 2. 1286 became law without the Governor's signature.
Publisher's Notes. Acts 1995, No.

SUBCHAPTER 5 — ANNEXATION OF SURROUNDED LAND

SECTION.

14-40-501. Authority — Exceptions.

14-40-502. Hearing — Notice.

SECTION.

14-40-503. Procedure for annexation.

Effective Dates. Acts 1979, No. 314, § 4: became law without Governor's signature, Mar. 7, 1979. Emergency clause provided: "Whereas, many islands of small unincorporated areas have been created within the limits of existing municipalities, and whereas, this causes great confusion to the public and also great

expense to municipalities in having to run vital services around these islands; now, therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate protection of the public peace, health and safety shall take effect immediately on its passage and approval."

14-40-501. Authority — Exceptions.

(a)(1) Whenever the incorporated limits of a municipality have completely surrounded an unincorporated area, the governing body of the municipality may propose an ordinance calling for the annexation of the land surrounded by the municipality.

(2) The ordinance will provide a legal description of the land to be annexed and describe generally the services to be extended to the area to be annexed.

(b)(1) The unincorporated area to be annexed shall comply with the standards for lands qualifying for annexation which are set forth in § 14-40-302.

(2) Privately owned lakes exceeding six (6) acres of water surface which are used exclusively for recreational purposes and lands adjacent thereto not exceeding twenty (20) acres in size which are used exclusively for recreational purposes in relation to the lake shall not qualify for annexation under the provisions of this subchapter.

History. Acts 1979, No. 314, § 1;
A.S.A. 1947, § 19-337.

14-40-502. Hearing — Notice.

(a) A public hearing shall be conducted within sixty (60) days of the proposal of the ordinance calling for annexation.

(b) At least fifteen (15) days prior to the date of the public hearing, the governing body of the municipality shall publish a legal notice setting out the legal description of the territory proposed to be annexed and notify by certified mail all the property owners within the area proposed to be annexed of their right to appear at the public hearing to present their views on the proposed annexation.

History. Acts 1979, No. 314, § 2;
A.S.A. 1947, § 19-338.

14-40-503. Procedure for annexation.

(a)(1) At the next regularly scheduled meeting following the public hearing, the governing body of the municipality proposing annexation may bring the proposed ordinance up for a vote.

(2) If a majority of the total number of members of the governing body vote for the proposed annexation ordinance, then a prima facie case for annexation shall be established, and the city shall proceed to render services to the annexed area.

(b) The decision of the municipal council shall be final unless suit is brought in chancery court of the appropriate county within thirty (30) days after passage to review the actions of the governing body.

History. Acts 1979, No. 314, § 3;
A.S.A. 1947, § 19-339.

SUBCHAPTER 6 — ANNEXATION PROCEEDINGS BY ADJOINING LANDOWNERS**SECTION.**

14-40-601. Application by petition.

14-40-602. Hearing on petition.

14-40-603. Order for annexation.

14-40-604. Proceedings to prevent annexation.

SECTION.

14-40-605. Confirmation of annexation.

14-40-606. Rights and privileges of new inhabitants.

14-40-607. [Repealed.]

Publisher's Notes. For cases dealing with certain procedural aspects of annexation, see case notes under sections in Chapter 38 of this title.

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

Acts 1953, No. 142, § 5: approved Feb. 25, 1953. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that there are now areas contiguous to and adjoining various municipalities in the State which should be annexed

to said municipalities, but that such annexation is being delayed by the present annexation procedure. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of public peace, health and safety shall take effect and be in full force from and after its passage."

Acts 1963, No. 549, § 3: Mar. 29, 1963. Emergency clause provided: "Whereas, there now exists in the State of Arkansas cities whose urban population has spread beyond its existing city limits, and there is

a great need to authorize and permit cities to extend their boundaries, therefore, an emergency is hereby declared, and this act being necessary for the public peace,

health, and safety, the same shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Rev. Changing Boundaries of Municipal Corporations in Arkansas, 20 Ark. L. Rev. 135.

UALR L.J. Owen, Note: Local Government — Municipal Corporation — Annexation Invalidation, 2 UALR L.J. 105.

14-40-601. Application by petition.

(a) Whenever a majority of the real estate owners of any part of a county contiguous to and adjoining any city or incorporated town shall desire to be annexed to the city or town, they may apply, by petition in writing, to the county court of the county in which the city or town is situated and shall name the persons authorized to act on behalf of the petitioners.

(b) The "majority of real estate owners" referred to in this section shall mean a majority of the total number of real estate owners in the area affected, if the majority of the total number of owners shall own more than one-half ($\frac{1}{2}$) of the acreage affected.

History. Acts 1875, No. 1, § 79, p. 1; C. Acts 1953, No. 142, § 1; A.S.A. 1947, & M. Dig., § 7462; Pope's Dig., § 9495; § 19-301.

CASE NOTES

ANALYSIS

In general.
Amendments.
Contiguous land.
Majority of real estate owners.
Properly description.

In General.

Where annexation of territory contiguous to a municipality is desired, a petition signed by a majority of real estate owners in the territory sought to be annexed and by a majority of the real estate owners of the affected area who are residents of the county in which the municipality and area affected must be filed. *Call v. Wharton*, 204 Ark. 544, 162 S.W.2d 916 (1942).

Amendments.

Although this section does not specifically provide for amendments to a petition for annexation, there is nothing wrong with court looking to petition and amended petition to ascertain whether or not a majority of the owners of record who

own the majority of land have in fact petitioned to be annexed and that the area has been sufficiently identified. *Chastain v. Davis*, 294 Ark. 134, 741 S.W.2d 632 (1987).

Contiguous Land.

Land held not contiguous to municipality. *Clark v. Holt*, 218 Ark. 504, 237 S.W.2d 483 (1951).

Land held contiguous to municipality. *Louallen v. Miller*, 229 Ark. 679, 317 S.W.2d 710 (1958).

There is no requirement that land be completely contiguous. *Chastain v. Davis*, 294 Ark. 134, 741 S.W.2d 632 (1987).

Majority of Real Estate Owners.

When annexation is desired, petition filed with county court must be signed by majority of real estate owners of the area sought to be annexed and also a majority of such owners who are residents of the county in which the municipality and area are located. *Call v. Wharton*, 204 Ark. 544, 162 S.W.2d 916 (1942).

Petition of majority of real estate owners does not mean resident landowners, but a majority of the total number of real estate owners in area affected. *Smalley v. City of Ft. Smith*, 239 Ark. 39, 386 S.W.2d 944 (1965).

Evidence showed majority of landowners had signed the petition for annexation. *Chastain v. Davis*, 294 Ark. 134, 741 S.W.2d 632 (1987).

Property Description.

Although original petition contained an incorrect property description, map at-

tached thereto, which was also one of exhibits at trial, properly and sufficiently described property sought to be annexed. *Chastain v. Davis*, 294 Ark. 134, 741 S.W.2d 632 (1987).

Cited: *Town of Beaver v. Ratliff*, 282 Ark. 516, 669 S.W.2d 467 (1984); *Lacey v. Bekaert Steel Wire Corp.*, 619 F. Supp. 1234 (W.D. Ark. 1985); *Britton v. City of Conway*, 36 Ark. App. 232, 821 S.W.2d 65 (1991).

14-40-602. Hearing on petition.

(a)(1) When the petition shall be presented to the county court, the clerk shall file it, and the court shall set a date for a hearing on the petition.

(2) The date for the hearing shall not be less than thirty (30) days after the filing of the petition.

(b)(1)(A) Between the time of the filing of the petition and the date of the hearing, the petitioners shall cause a notice to be published in some newspaper of general circulation in the county.

(B) The notice shall be published one (1) time a week for three (3) consecutive weeks.

(2) If there is no newspaper of general circulation in the county, notice shall be posted at some public place within the limits of the incorporated town or city for at least three (3) weeks before the date of the hearing.

(3) The notice referred to in this subsection shall contain the substance of the petition and state the time and place appointed for the hearing thereof.

(c) The hearing procedure set forth in § 14-38-103 shall be followed in the proceedings concerned in this section insofar as such procedure is not in conflict with any provision expressly set out in this subchapter.

History. Acts 1875, No. 1, § 80, p. 1; C. & M. Dig., § 7463; Pope's Dig., § 9496; Acts 1953, No. 142, § 2; A.S.A. 1947, § 19-302.

Cross References. Hearing on petition to incorporate, § 14-38-103.

CASE NOTES

ANALYSIS

Evidence.
Notice.

Evidence.

The substantial evidence rule applies in annexation proceedings initiated by petition, and the courts are authorized to exercise the same discretion as to the

rightness and propriety thereof that they exercise in the case of annexation proceedings by municipality. *Cantrell v. Vaughn*, 228 Ark. 202, 306 S.W.2d 863 (1957).

Notice.

Although notice of proceeding for annexation of territory to a municipality can be waived by all the interested parties, on

appeal, the court cannot indulge the presumption that only owners were the petitioners and that all interested parties were present and waived notice. *Posey v. Paxton*, 201 Ark. 825, 147 S.W.2d 39 (1941).

Notice of proposed annexation held sufficient. *Chastain v. Davis*, 294 Ark. 134, 741 S.W.2d 632 (1987).

Cited: *Louallen v. Miller*, 229 Ark. 679, 317 S.W.2d 710 (1958); *Town of Beaver v. Ratliff*, 282 Ark. 516, 669 S.W.2d 467 (1984).

14-40-603. Order for annexation.

(a) After the hearing, if the county court shall be satisfied that the allegations of the petition were sustained by the proof, if the court shall be satisfied that the requirements for signatures under § 14-40-601 have been complied with, and if the court shall be satisfied that the limits of the territory to be annexed have been accurately described and an accurate map thereof made and filed, and that the prayer of the petitioner is right and proper, then the court shall enter its order granting the petition and annexing the territory.

(b) The order shall be recorded by the clerk of the county.

History. Acts 1875, No. 1, § 80, p. 1; C. & M. Dig., § 7463; Pope's Dig., § 9496; Acts 1953, No. 142, § 2; A.S.A. 1947, § 19-302.

Cross References. Order to incorporate, § 14-38-104.

CASE NOTES

ANALYSIS

In general.
Determination.
Signatures.
Void orders.

In General.

Judgment or order entered in proceedings for annexation of territory must necessarily show on its face the fulfillment of statutory requirements to give court jurisdiction. *Posey v. Paxton*, 201 Ark. 825, 147 S.W.2d 39 (1941).

Determination.

When county court to which petition is presented is satisfied that qualified voters own property in the territory sought to be annexed and reside therein and also finds that a majority of them have signed the petition and that other conditions have been complied with, it has duty to grant petition. *Call v. Wharton*, 204 Ark. 544, 162 S.W.2d 916 (1942).

Where evidence was conclusive that 90 percent of territory sought to be annexed

to a municipality was used for agricultural purposes and was not needed for prospective municipal purposes, county court was justified in denying landowner's petition for annexation. *Cantrell v. Vaughn*, 228 Ark. 202, 306 S.W.2d 863 (1957).

Signatures.

Order annexing territory to municipality which failed to show that notice of the proceeding was given based on a petition which failed to show that those who signed it were the only property owners in the territory to be annexed was void ab initio and no rights accrued under it. *Posey v. Paxton*, 201 Ark. 825, 147 S.W.2d 39 (1941).

Where annexation petition was signed by a majority of the resident landowners in the territory sought to be annexed, but not a majority of the landowners living in the county, judgment denying annexation on remonstrator's petition was held correct. *Call v. Wharton*, 204 Ark. 544, 162 S.W.2d 916 (1942).

Void Orders.

In collateral attack upon order entered in proceeding for annexation of territory, the court must decide whether notice was given or waived by an inspection of the record only, and order showing that the petition was approved the same day as filed and not showing that all parties

interested in the annexation of the proposed territory were present when the order was made is void ab initio. *Posey v. Paxton*, 201 Ark. 825, 147 S.W.2d 39 (1941).

Cited: *Town of Beaver v. Ratliff*, 282 Ark. 516, 669 S.W.2d 467 (1984).

14-40-604. Proceedings to prevent annexation.

(a)(1) No further action shall be taken for a period of thirty (30) days after the order for annexation has been entered. Within that time any person interested may institute a proceeding in the circuit court to have the annexation prevented.

(2)(A) If the court or judge hearing the proceeding shall be satisfied that the requirements for annexation as set out in this subchapter have not been complied with, that the territory proposed to be annexed is unreasonably large, or that the territory is not properly described, the court or judge shall make an order restraining any further action under the order of the county court and annulling it. However, such proceeding shall not bar any subsequent petition.

(B) If the court or judge shall determine that the order of the county court was proper, then the order of the county court shall be affirmed, and the proceedings to prevent the annexation shall be dismissed.

(b) When any complaint shall be made in accordance with this section to prevent an annexation of territory, notice thereof shall be given to the city or incorporated town authorities and the agent of the petitioners.

History. Acts 1875, No. 1, §§ 81, 82, p. 1; C. & M. Dig., §§ 7464, 7465; Pope's Dig., §§ 9497, 9498; Acts 1953, No. 142, § 3; 1959, No. 212, § 1; 1961, No. 474, § 1; A.S.A. 1947, §§ 19-303, 19-304.

CASE NOTES**ANALYSIS**

Purpose.

Annexation proceeding not shown.

Any persons interested.

Evidence.

Notice.

Size of area.

Thirty-day period.

Purpose.

The sole purpose of this section is to give to remonstrants an opportunity to appeal a county court order to the circuit court. *Palmer v. City of Conway*, 271 Ark. 127, 607 S.W.2d 87 (Ct. App. 1980).

Annexation Proceeding Not Shown.

Mere filing of plat by owner of land adjoining city boundary showing the lands to be divided in lots, blocks, and streets and designated as an "addition" to the city was in no way a compliance with statutory provisions regarding annexation and in no way amounted to annexation. *Van Marion v. Hawkins*, 224 Ark. 199, 272 S.W.2d 317 (1954).

Any Persons Interested.

Petition of parties to quash order of court annexing territory to a municipality must show that the petitioners have an interest as residents or owners of property either in the old municipality or the terri-

tory annexed. *Perkins v. Holman*, 43 Ark. 219 (1884).

Writ to quash order of annexation of territory to a municipality that was granted upon petition of owners of the annexed territory will be refused unless the owners or persons named in their petition as authorized to act in their behalf are made parties to the proceedings. *Black v. Brinkley*, 54 Ark. 372, 15 S.W. 1030 (1891).

Parties who filed remonstrance in county court protesting against annexation of territory to a municipal corporation should be treated as parties to such proceeding and be allowed to appeal from an adverse judgment of that court. *Barnwell v. Town of Gravette*, 87 Ark. 430, 112 S.W. 973 (1908).

"Any person interested" means any person who has some interest in the municipality or the area to be annexed. *City of Crosset v. Anthony*, 250 Ark. 660, 466 S.W.2d 481 (1971); *Turner v. Wiederkehr Village*, 261 Ark. 72, 546 S.W.2d 717 (1977).

In case where city was petitioning for annexation of two separate areas and the persons who opposed all resided or owned property in one area, there was no interested party contesting the annexation of the other area. A motion to dismiss as to the latter area should have been granted. *City of Crosset v. Anthony*, 250 Ark. 660, 466 S.W.2d 481 (1971).

At least some interest must be shown on trial de novo in a circuit court in the face of a motion to dismiss for lack of interest. *Turner v. Wiederkehr Village*, 261 Ark. 72, 546 S.W.2d 717 (1977).

Attorney who owned property near village to be annexed and had contingent fee contract under which he would acquire property in the village if he won his client's lawsuit did not have standing to challenge the incorporation in the absence of a showing that he was threatened with a direct pecuniary damage not shared by members of the public in general. *Turner v. Wiederkehr Village*, 261 Ark. 72, 546 S.W.2d 717 (1977).

Where plaintiff testified that he owned land within the city to which the land was to be annexed, filed a pro se petition in county court opposing annexation, was one of the named remonstrants in circuit court, and was opposed to the annexation, the circuit court erred in finding that

there was no plaintiff in that court who had standing to contest the annexation. *Britton v. City of Conway*, 36 Ark. App. 232, 821 S.W.2d 65 (1991).

Evidence.

If municipality renders a favorable vote in favor of annexation of territory to it, such vote makes a prima facie case as to the propriety of annexation, and burden of showing sufficient cause against it is placed upon the remonstrants. *Burton v. City of Ft. Smith*, 214 Ark. 516, 216 S.W.2d 884 (1949).

Notice.

Where property owner filed independent action in circuit court to challenge county court order allowing municipality to annex certain property and only purported notice that plaintiff gave to the municipality during the 30-day period following the county court annexation order was the mailing of a copy of the circuit court complaint to the municipal attorney, since the plaintiff was not serving notice of an appeal, but was commencing an independent attack on the annexation, the mailing of a copy of the complaint to the municipal attorney did not constitute notice within the meaning of this section and § 14-40-605. *Town of Beaver v. Ratliff*, 282 Ark. 516, 669 S.W.2d 467 (1984).

A complaint filed in circuit court under the provisions of this section is not an appeal but is an independent attack on the annexation, and the notice required means service of process pursuant to Ark. R. Civ. P. 4. *Britton v. City of Conway*, 36 Ark. App. 232, 821 S.W.2d 65 (1991).

Where the petition for annexation filed in county court clearly indicated that a law firm was an agent for the petitioners, § 14-40-601 required that summons be served on them. *Britton v. City of Conway*, 36 Ark. App. 232, 821 S.W.2d 65 (1991).

Section 14-40-601 requires service of summons on the agent of the petitioners for annexation, but rather than dismissing the complaint in opposition to the annexation for failure to serve notice, the trial court should have directed that the petitioners be made a party by service of summons on their agent. *Britton v. City of Conway*, 36 Ark. App. 232, 821 S.W.2d 65 (1991).

Size of Area.

Annexation of an area to a municipality will not be denied because the proposed area is too small. *City of Sherwood v. Hardin*, 230 Ark. 762, 325 S.W.2d 75 (1959).

Thirty-Day Period.

Remonstrants were not prejudiced by action of city in passing ordinance accept-

ing annexation two days before 30-day period had elapsed, where the remonstrants were in no way prevented from taking their appeal to the circuit court. *Palmer v. City of Conway*, 271 Ark. 127, 607 S.W.2d 87 (Ct. App. 1980).

Cited: *Town of Beaver v. Ratliff*, 282 Ark. 516, 669 S.W.2d 467 (1984).

14-40-605. Confirmation of annexation.

(a) If no notice shall be given within thirty (30) days from the making of the order of annexation by the county court, the proceeding before the court shall in all things be confirmed, if the city or incorporated town council shall, by ordinance or resolution, accept the territory.

(b)(1) If the council accepts the territory, the county clerk shall duly certify one (1) copy of the plat of the annexed territory and one (1) copy of the order of the court and the resolution or ordinance of the council. The clerk shall forward a copy of each document to the Secretary of State, who shall file and preserve them. The clerk shall forward one (1) copy of the plat of the annexed territory and one (1) copy of the order of the court to the Director of the Tax Division of the Arkansas Public Service Commission, who shall file and preserve them and shall notify all utility companies having property in the municipality of the annexation.

(2) The clerk shall forward a certified copy of the order of the court to the council.

History. Acts 1875, No. 1, § 82, p. 1, C. & M. Dig., § 7466; Pope's Dig., § 9499; Acts 1959, No. 212, § 1; 1961, No. 474, § 1; A.S.A. 1947, § 19-305.

Cross References. Secretary of state to preserve papers, § 14-38-114.

CASE NOTES**ANALYSIS**

Acceptance.
Notice.

Acceptance.

Even though there is no ordinance or resolution of a municipality accepting annexation, other evidence is sufficient to substantiate such acceptance. *Gowers v. Van Buren*, 210 Ark. 776, 197 S.W.2d 741 (1946).

Where there was no showing in record that city made effort to comply with statutory requirements regarding annexation, but merely "accepted" platted area adjoining city boundary by resolution of city council, the city council had no jurisdiction to make the annexation. *Van*

Marion v. Hawkins, 224 Ark. 199, 272 S.W.2d 317 (1954).

Where city council passed resolution "accepting" an area adjoining city boundary which had been previously platted to show lands divided into lots, blocks, and streets, taxpayers were not estopped to deny validity of the "annexation" on theory that they had for many years paid municipal taxes and accepted municipal benefits. *Van Marion v. Hawkins*, 224 Ark. 199, 272 S.W.2d 317 (1954).

Notice.

Where property owner filed independent action in circuit court to challenge county court order allowing municipality to annex certain property and only pur-

ported notice that plaintiff gave to the municipality during the 30-day period following the county court annexation order was the mailing of a copy of the circuit court complaint to the municipal attorney, since the plaintiff was not serving notice of an appeal, but was commencing an independent attack on the annexation,

the mailing of a copy of the complaint to the municipal attorney did not constitute notice within the meaning of § 14-40-604 and this section. *Town of Beaver v. Ratliff*, 282 Ark. 516, 669 S.W.2d 467 (1984).

Cited: *Gregg v. Hartwick*, 292 Ark. 528, 731 S.W.2d 766 (1987).

14-40-606. Rights and privileges of new inhabitants.

As soon as the resolution or ordinance declaring the annexation has been adopted or passed, the territory shall be deemed and taken to be a part and parcel of the limits of the city or incorporated town, and the inhabitants residing therein shall have and enjoy all the rights and privileges of the inhabitants within the original limits of the city or incorporated town.

History. Acts 1875, No. 1, § 83, p. 1; C. & M. Dig., § 7467; Pope's Dig., § 9500; A.S.A. 1947, § 19-306.

CASE NOTES

Cited: *Gregg v. Hartwick*, 292 Ark. 528, 731 S.W.2d 766 (1987).

14-40-607. [Repealed.]

Publisher's Notes. This section, concerning annexation proceedings by municipality, was repealed by Acts 1993, No. 1121, § 1. The section was derived from

Acts 1875, No. 1, § 84, p. 1; C. & M. Dig., § 7468; Pope's Dig., § 9501; Acts 1963, No. 549, § 1; 1969, No. 65, § 1; A.S.A. 1947, § 19-307.

SUBCHAPTERS 7-11

[Reserved]

SUBCHAPTER 12 — CONSOLIDATION OF MUNICIPALITIES

SECTION.

- 14-40-1201. Petition for consolidation.
- 14-40-1202. Special election called.
- 14-40-1203. Election results.
- 14-40-1204. Contest of election.
- 14-40-1205. Division of smaller municipality into wards.
- 14-40-1206. Plat of consolidated municipality.

SECTION.

- 14-40-1207. Special election of aldermen.
- 14-40-1208. Existing officers, etc.
- 14-40-1209. Public property.
- 14-40-1210. Payment of existing debts.
- 14-40-1211. Prior debts not preferred.
- 14-40-1212. Rights of annexed territory to benefits of its revenues.
- 14-40-1213. Franchises, contracts, and other obligations.

Effective Dates. Acts 1913, No. 318, § 6: approved Apr. 2, 1913. Emergency clause provided: "It being necessary to the peace and safety of the state that this act shall take immediate effect, it is hereby provided that it shall take effect immediately upon its approval."

Acts 1995, No. 806, § 5: Mar. 28, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly of the State of Arkansas that the Arkansas law on municipal consolidation currently allows as few as fifty (50) voters in small towns or cities to force an election on the question of consolidating two (2) cities into one; that special elections at anytime can be an expensive matter and the cost of the election is to borne by the city treasuries; that is would be more equitable and uniform to set the standard for calling special elections on consolidations at the level required for initiative and referendum questions. Therefore, in order to reduce unnecessary expenses for city special elections, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health,

and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1333, § 5: became law without Governor's signature. Noted Apr. 12, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 806 of 1995 changes the number of signatures required to petition for an election to consolidate two municipalities; that Act 806 of 1995 passed both houses containing an emergency clause and was signed by the Governor on March 28, 1995; that it has now been discovered that the immediate implementation of Act 806 will work to the detriment of some of the citizens of this state who have expended energy and effort in reliance upon the prior law; that it was not the intent of the General Assembly to detrimentally affect those people; that this act will, in effect, postpone implementation of the provisions of Act 806 until July 1, 1995. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-40-1201. Petition for consolidation.

(a)(1) [Repealed].

(2) Beginning July 1, 1995, when the inhabitants of any city or incorporated town adjoining or contiguous to another smaller municipal corporation of any class in the same county, municipal corporations separated by a river shall be deemed contiguous, shall desire that the city or incorporated town annex to it or consolidate with it the smaller municipal corporation, they may apply, by a petition in writing, signed by a number of qualified electors from each of the municipal corporations equal to not less than fifteen percent (15%) of the total vote cast for the office of mayor in the respective city or town in the last preceding general election, to the city or town council of the larger municipal corporation.

(3) The petition shall:

(A) Describe the municipal corporations to be consolidated; and

(B) Name the persons authorized to act in behalf of the petitioners in presenting the petition as provided for in this section.

(4)(A) Beginning July 1, 1995, the petitions shall be filed with the city clerk or town recorder of each municipal corporation, who shall determine the sufficiency of the petitions in each municipality.

(B)(i) If any petition is determined insufficient, he shall notify the petitioners in writing without delay, and the petitioners shall be

permitted ten (10) days from the notification to solicit additional signatures or to prove any rejected signatures.

(ii) If the city clerk or town recorder of the respective municipalities shall decide the petitions are sufficient, they shall each notify the petitioners in writing and shall present the petitions to the city or town council of the larger municipal corporation.

(b)(1) When the petition is presented to the council, it shall be lawful for the council to pass an ordinance in favor of the annexation and approving and ratifying the petition.

(2) In that event, it shall be the duty of the persons named in the petition authorized to act in behalf of the petitioners to file the petition, together with a certified copy of the ordinance, in the office of the county clerk of the county in which the municipal corporations are situated.

History. Acts 1913, No. 318, § 1; C. & M. Dig., § 7471; Pope's Dig., § 9504; A.S.A. 1947, § 19-310; Acts 1995, No. 806, § 1; 1995, No. 1333, § 1; 1997, No. 214, § 1.

A.C.R.C. Notes. The 1997 amendment to this section contains grammatical or stylistic errors. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the language.

Amendments. The 1995 amendment by No. 806, as amended by No. 1333, rewrote (a)(1); inserted (a)(2), redesignating former (a)(2) as (a)(3); added (a)(4); added the subdivision designations in (b); and made a minor punctuation change.

The 1997 amendment repealed (a)(1).

14-40-1202. Special election called.

(a)(1)(A) Upon presentation of the petition to the county court by the authorized persons, the court shall at once order and call a special election in both of the municipal corporations on the question of the annexation.

(B) The court shall give thirty (30) days' notice of the election by publication one (1) time a week in some newspaper with a bona fide circulation in the territory and by notices posted in conspicuous places therein.

(2) The court shall appoint one (1) judge and one (1) clerk in each ward or other division of each municipal corporation, and the mayor and city council of each of the municipal corporations shall select two (2) judges and one (1) clerk for each of the wards or other divisions having the qualifications of electors, to act as judges and clerks of election within the respective wards.

(3) The court shall fix all polling places at which the voting shall take place.

(b)(1) The election shall be held and conducted in each corporation in the manner prescribed by law for holding elections for cities or incorporated towns, so far as they are applicable. Election expenses are to be paid by the larger city or incorporated town.

(2)(A) All elections held under this subchapter are made legal elections.

(B)(i) The elections shall be governed by and subject to all the laws relating to general elections so far as applicable.

(ii) All judges, clerks, and persons voting in the elections shall be subject to the penalties prescribed by the general election laws of the state for any violation of the general election laws to the same extent as though the elections were specifically included in the general election laws of the state.

(3) The returns of the elections shall be made to the court and the result thereof declared by the court.

History. Acts 1913, No. 318, § 1; C. & M. Dig., § 7472; Pope's Dig., § 9505; A.S.A. 1947, § 19-311.

14-40-1203. Election results.

(a) At any election held under this subchapter, all qualified electors who are residents of either municipality shall be allowed to vote on the adoption or rejection of the proposed annexation or consolidation.

(b)(1)(A) If a majority of the votes cast in each of the respective municipalities, considered as a separate and distinct unit and without reference to the vote cast in the other, shall be in favor of consolidation or annexation, then the county court shall declare, by an appropriate order, the annexation or consolidation consummated.

(B) Upon the making of the order, the smaller municipal corporation and the territory comprising it shall, in law, be deemed and be taken to be included and shall be a part of the larger municipal corporation, and the inhabitants thereof shall in all respects be citizens thereafter of the larger municipal corporation.

(2) If a majority of the votes of either municipal corporation shall be against annexation, then the city or incorporated town shall not be again permitted to attempt the consolidation within two (2) years thereafter.

History. Acts 1913, No. 318, § 1; C. & M. Dig., § 7473; Pope's Dig., § 9506; A.S.A. 1947, § 19-312.

CASE NOTES

ANALYSIS

In general.

Annexation of unincorporated lands.

In General.

The General Assembly did not create an inharmonious or unworkable scheme of procedure when it empowered the county courts to canvass election returns and, at the same time, authorized the circuit courts to adjudicate contests of elections in an original proceeding. *Russell v. Cockrill*, 211 Ark. 123, 199 S.W.2d 584 (1947).

Annexation of Unincorporated Lands.

The court rejected the argument that the two-year time limit contained in this section, which applies to the consolidation of two municipalities, should be read into statutes governing the annexation of unincorporated lands as a reasonable time period within which to prohibit further attempts at annexation. *Lewis v. City of Bryant*, 291 Ark. 566, 726 S.W.2d 672 (1987).

14-40-1204. Contest of election.

Any elector shall have the right to test the legality and fairness of the election and the declared results in a proceeding before the circuit court without being required to give bond for costs. However, no such contest shall interfere with the consolidation until finally decided.

History. Acts 1913, No. 318, § 1; C. & M. Dig., § 7473; Pope's Dig., § 9506; A.S.A. 1947, § 19-312.

CASE NOTES**In General.**

The General Assembly did not create an inharmonious or unworkable scheme of procedure when it empowered the county courts to canvass election returns and, at

the same time, authorized the circuit courts to adjudicate contests of elections in an original proceeding. *Russell v. Cockrill*, 211 Ark. 123, 199 S.W.2d 584 (1947).

14-40-1205. Division of smaller municipality into wards.

(a) As soon as practicable after the annexation, the council of the larger city or incorporated town shall, by ordinance, form the territory of the smaller municipality into such number of wards as shall seem to be to the best interest of the combined city or incorporated town, or shall change the number and boundaries of all the wards of the entire city or incorporated town, or any part of them, as shall seem to be to the best interests of the combined city or incorporated town. In such way, however, the wards shall have as nearly an equal population and assessed valuation of property as practicable and as, in the opinion of the council, would best subserve the true interest of the citizens and taxpayers of the combined city or incorporated town.

(b) The territory and inhabitants of the smaller municipal corporation shall receive that fair and just representation in the city council as the size, population, and assessed valuation of property demands, as compared with the representation accorded to other wards of the city or incorporated town.

(c) If inhabitants of the smaller municipal corporation feel aggrieved at the number of wards, or in any manner dissatisfied with the division of the territory into wards, upon petition of fifty (50) qualified electors, the circuit court is authorized to make changes in the number of wards as the justice of the case requires, in the manner provided in § 14-43-311, so far as applicable.

History. Acts 1913, No. 318, § 2; C. & M. Dig., § 7474; Pope's Dig., § 9507; A.S.A. 1947, § 19-313.

Cross References. Redistricting of wards § 14-43-311.

14-40-1206. Plat of consolidated municipality.

(a) The council of the larger city or incorporated town shall cause a plat to be made of the entire city or incorporated town after the annexation thereto and the division into wards of the smaller municipal corporation.

(b)(1) A certified copy of the plat shall be filed and recorded in the office of the circuit court and ex officio recorder of the county and with the Secretary of State.

(2)(A) Thereafter, the plat shall stand, be, and remain the division of the city or incorporated town into wards, and the number and boundaries thereof, until such time as it may be afterwards changed according to law.

(B) However, no change in the boundaries of the wards of the larger city or incorporated town shall determine or affect the time of service of any previously elected alderman of any ward in the larger city or incorporated town.

History. Acts 1913, No. 318, § 2; C. & M. Dig., § 7475; Pope's Dig., § 9508; A.S.A. 1947, § 19-314.

14-40-1207. Special election of aldermen.

(a) The city or town council shall call a special election of aldermen, to be held at such times and places as it may direct in the wards of the smaller municipality and for the election of aldermen from any other new wards that may be created by the council out of territory included in the larger city or incorporated town before the annexation, as provided for in this subchapter.

(b) Each ward of the consolidated city or incorporated town shall have two (2) aldermen, to be elected in the same manner and for the same term as aldermen are elected in cities and incorporated towns.

History. Acts 1913, No. 318, § 3; C. & M. Dig., § 7476; Pope's Dig., § 9509; A.S.A. 1947, § 19-315.

14-40-1208. Existing officers, etc.

The term of office of all officers, aldermen, and employees of the smaller municipality and all laws in force therein shall cease upon and after the consolidation.

History. Acts 1913, No. 318, § 3; C. & M. Dig., § 7476; Pope's Dig., § 9509; A.S.A. 1947, § 19-315.

14-40-1209. Public property.

All public property of the smaller municipality shall belong to the consolidated city or incorporated town.

History. Acts 1913, No. 318, § 4; C. & M. Dig., § 7477; Pope's Dig., § 9510; A.S.A. 1947, § 19-316.

14-40-1210. Payment of existing debts.

(a)(1) The debts of each municipality owing prior to or at the time of the consolidation shall be paid by the consolidated municipality by appropriating the revenues derived from year to year from the territory and the inhabitants of what was formerly the larger municipality to the payment of the debts of the larger municipality owing before the consolidation.

(2) In like manner, the debts of the smaller municipality owing prior to and at the time of the consolidation shall be paid by appropriating the revenues derived from what was formerly the smaller municipality in such manner as to do the least injustice to the inhabitants of each former municipality in the way of a decrease in the improving or bettering of the territory as it formerly existed.

(b) In appropriating the revenues of either municipality to pay its own debts existing prior to the consolidation, neither the territory nor inhabitants of what was formerly the larger or smaller municipality shall be discriminated against in the distribution of police protection, board of health service, fire protection, public lighting, or other like public service.

History. Acts 1913, No. 318, § 4; C. & M. Dig., § 7477; Pope's Dig., § 9510; A.S.A. 1947, § 19-316.

14-40-1211. Prior debts not preferred.

(a) Creditors of either municipal corporation, on account of obligations made prior to consolidation, shall not be paid sooner or shall not be permitted to enforce the collection of their debts sooner against the consolidated city or incorporated town than the separate municipality prior to consolidation could have paid its own debts or could have been forced to do so.

(b) In any proceeding in court, by mandamus or otherwise, against a consolidated city or incorporated town to enforce the obligations created by either municipal corporation prior to consolidation, no greater part of the revenue of the consolidated city or incorporated town shall be subject to be applied by the court at the instance of the creditor to the payment of the obligations than could have been subjected against the revenues of the particular city or incorporated town creating the obligation prior to consolidation if the particular municipal corporation having so created the obligation had not been annexed.

History. Acts 1913, No. 318, § 5; C. & M. Dig., § 7479; Pope's Dig., § 9512; A.S.A. 1947, § 19-318.

14-40-1212. Rights of annexed territory to benefits of its revenues.

(a) The wards formed out of the territory comprising the former territory of the smaller municipal corporation annexed under the provisions of this subchapter shall always receive betterments and improvements in an amount equal to the amount of revenue derived by the consolidated municipality from the territory and inhabitants of the smaller municipal corporation, after having deducted the pro rata share of the territory of the running expenses necessary to be expended in maintaining the government of the entire city or incorporated town and after having taken into consideration the amount of revenues necessarily appropriated to pay the indebtedness due by the smaller municipality before consolidation, until the indebtedness is paid. In addition, those wards shall always receive their fair and equitable proportion of the police, board of health, fire protection, and lighting service of the larger city or incorporated town. They shall in all other ways receive fair and liberal treatment and their fair proportion of the expenditure of moneys made by the larger city or incorporated town.

(b)(1) Aldermen representing the wards composing the territory of the smaller municipal corporation before consolidation shall have a right, at all times, to demand of the city council the benefit of the revenue collected from the wards, as provided for in this section.

(2) On the refusal of the council, the aldermen shall have a right to enforce the revenue rights by mandamus or other appropriate proceedings.

(c) In the event the aldermen, or fifty (50) qualified electors of the territory annexed, feel aggrieved in reference to the amount of revenue expended on the territory or as to the other rights guaranteed in this section to the annexed municipality, they may submit the matter to the circuit court, which is authorized by appropriate orders to compel the consolidated city or incorporated town to give the former territory of the smaller municipal corporation the full benefit of its revenue as provided in this section.

History. Acts 1913, No. 318, § 4; C. & M. Dig., § 7478; Pope's Dig., § 9511; A.S.A. 1947, § 19-317.

14-40-1213. Franchises, contracts, and other obligations.

No franchises, contracts, or other obligations of an extraordinary nature, or other than those necessary for the ordinary and usual running of the affairs of either municipal corporation, which have been granted, made, or created by either municipal corporation after the passage of an ordinance favoring annexation, and prior to the consum-

mation of the annexation, shall be valid and binding against the consolidated municipality, or any part thereof, in the event that a consolidation is effected within sixty (60) days after passage of the ordinance, unless they shall be afterward ratified by the consolidated city or incorporated town.

History. Acts 1913, No. 318, § 5; C. & M. Dig., § 7480; Pope's Dig., § 9513; A.S.A. 1947, § 19-319.

CASE NOTES

Cited: Mann v. City of Hot Springs, 234 Ark. 9, 350 S.W.2d 317 (1961).

SUBCHAPTERS 13 -17

[Reserved]

SUBCHAPTER 18 — DETACHMENT OF TERRITORY GENERALLY

SECTION.

14-40-1801. Proceedings generally.

14-40-1802. Order for exclusion.

SECTION.

14-40-1803. When effective — Limitation.

Cross References. Reduction to acreage, § 14-41-301 et seq.

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

Acts 1997, No. 140, § 6: Feb. 13, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law prescribing the procedure for the detachment of territory located within a municipal corporation is unduly burdensome and expensive on the taxpayers; that this act grants an alternative procedure which is more efficient and less costly; and that this act should go into effect immediately in order

to grant cities and counties the flexibility provided herein as soon as possible. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

14-40-1801. Proceedings generally.

(a) Whenever any municipal corporation shall desire to throw any portion of the territory lying within its corporate limits outside of the limits and remit it back to the county in which the municipal corporation is situated, it shall be lawful for the council of the municipal corporation to submit the question to the qualified electors of the municipal corporation at an election to be held for that purpose. The election shall be held after giving notice of such election four (4) weeks

by advertisement in one (1) of the papers published in the municipal corporation or, if there is no paper published in the municipal corporation by advertisement posted in two (2) of the most public places in the municipal corporation.

(b) If a majority of the votes cast on that question shall be in favor of throwing the territory outside of its municipal corporate limits, the municipal corporation shall present to the county court a petition praying for such change in its territorial limits, and the hearing shall be had on the petition as is prescribed in § 14-38-103.

(c) Alternatively, the city council may, upon petition of the landowners affected and provided the territory is unimproved and uninhabited wetlands, resolve to request the county court to exclude the territory from the limits of the municipal corporation and remit it back to the county and a hearing shall be had on the petition as prescribed in § 14-38-103.

History. Acts 1875, No. 1, § 90, p. 1; C. & M. Dig., § 7487; Pope's Dig., § 9530; A.S.A. 1947, § 19-320; Acts 1997, No. 140, § 1.

Amendments. The 1997 amendment added (c).

14-40-1802. Order for exclusion.

(a) After hearing the petition, if the county court shall be satisfied that a majority of the qualified electors of the corporation are in favor of the exclusion of the territory mentioned in the petition from within its limits, or alternatively that the city council has resolved to request that the territory be excluded from the limits of the municipal corporation and remitted back to the county, that the territory to be excluded has been accurately described, and that it would be proper and right to grant the petition, it shall make an order excluding the territory in the petition mentioned from the limits of the municipal corporation and remitting it back to the county.

(b)(1) It shall be the duty of the clerk of the court to make out a certified copy of the order and to deliver it to the recorder of his county, whose duty it shall be to record the order in the proper book of records in his office.

(2) It shall also be the duty of the recorder to make out and forward to the Secretary of State a certified copy of the record.

History. Acts 1875, No. 1, § 90, p. 1; C. & M. Dig., § 7488; Pope's Dig., § 9531; A.S.A. 1947, § 19-321; Acts 1997, No. 140, § 2.

Amendments. The 1997 amendment inserted "or alternatively that the city ... back to the county" in (a).

14-40-1803. When effective — Limitation.

(a) After the record shall have been filed and a copy forwarded to the Secretary of State, the territory shall cease to be a part of the municipal corporation.

(b) The limits of cities of the first and second class shall not be reduced to an area less than they were on January 1, 1872.

History. Acts 1875, No. 1, § 90, p. 1; C. & M. Dig., § 7489; Pope's Dig., § 9532; A.S.A. 1947, § 19-322.

SUBCHAPTER 19 — DETACHMENT OF UNSUITABLE TERRITORY

SECTION.

14-40-1901. Designation by resolution.

14-40-1902. Hearing and determination.

SECTION.

14-40-1903. Public utility service.

Effective Dates. Acts 1961, No. 92, § 3: Feb. 16, 1961. Emergency clause provided: "Whereas, it appears that there are now municipal corporations within the State whose original city limits were extended so as to include areas which, because of error or otherwise, are no longer recognized by City and County Officials as being a part of said corporations, and whereas portions of such areas are no longer suitable for urban development

within the foreseeable future, the official maintaining of such areas within the corporate limits is causing confusion among officials and working a hardship upon property owners in both the corporations and in such area or territory, an emergency is hereby declared and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect immediately upon its passage and approval."

14-40-1901. Designation by resolution.

(a) Whenever it appears that the official corporate limits as shown by the records of the Secretary of State for any city or incorporated town have for more than ten (10) years included an area or territory that has not been recognized by city or incorporated town officials and assessed for taxation as a part of the city or incorporated town during the period, because of error or otherwise, and which has not been legally detached from the city or incorporated town, then the city or incorporated town council may, by resolution, designate and determine for any portion of the area or territory which it believes is unsuitable for urban development in the foreseeable future, that it is no longer necessary for corporate purposes, and that it desires to officially detach the designated area or territory outside of its corporate limits, retaining the remainder of the unrecognized territory therein.

(b) A certified copy of the resolution shall then be filed with the county court of the county where the city or town is situated or the county where the area or territory affected is situated, together with a petition that a hearing be held by the court to determine whether the

designated portions of the area or territory shall be officially excluded from the city or incorporated town limits.

History. Acts 1961, No. 92, § 1; A.S.A. 1947, § 19-325.

14-40-1902. Hearing and determination.

(a) Upon the filing of the petition, the county court shall set a date for hearing thereon, not less than fifteen (15) days nor more than thirty (30) days after the first publication of notice of the filing of the petition. Notice of the filing shall be published once each week for not less than two (2) weeks in a newspaper having a general circulation in the city or incorporated town.

(b)(1) After hearing the petition, if the court shall be satisfied that the designated area or territory has not been recognized by city or incorporated town officials and has not been assessed for taxation as a part of the city or incorporated town for more than ten (10) years, that it is no longer suitable for urban development, that the territory to be excluded is accurately described, and that the welfare of the inhabitants and property owners of both the city or incorporated town and of the area or territory affected will be best served, it shall make an order excluding designated area or territory described in the petition or such portions thereof as it determines should be so excluded from the limits of the city or incorporated town and remitting it back to the county.

(2) The clerk of the county shall certify a copy of the order to the recorder of the county, to be recorded by him, and shall likewise cause a certified copy to be forwarded to the Secretary of State, to be otherwise filed as provided by law.

History. Acts 1961, No. 92, § 2; A.S.A. 1947, § 19-326.

14-40-1903. Public utility service.

Any public utility serving the area detached shall have the right to continue to serve in the detached area on the same basis as service had been previously rendered prior to the action of the city or incorporated town council in adopting the resolution detaching the territory, except that no franchise tax shall be payable thereafter to the city or incorporated town.

History. Acts 1961, No. 92, § 4; A.S.A. 1947, § 19-327.

CHAPTER 41

ADDITIONS TO CITIES AND INCORPORATED TOWNS

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. FILING AND RECORDING REQUIREMENTS.
3. REDUCTION TO ACREAGE.

RESEARCH REFERENCES

C.J.S. 87 C.J.S., Towns, §§ 10-16.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — FILING AND RECORDING REQUIREMENTS

SECTION.

14-41-201. Plats of new additions to be filed and recorded — Penalty.

14-41-202. Certification of matters — Penalty.

SECTION.

14-41-203. Entry on tax books required — Penalty.

Cross References. Copies of plats for areas outside municipality to be transmitted to county planning board, § 14-17-208.

Subdividing land outside cities and towns, § 14-18-101 et seq.

Effective Dates. Acts 1907, No. 306, § 7: effective on passage.

14-41-201. Plats of new additions to be filed and recorded — Penalty.

(a) Any person or corporation owning any real estate who shall make any addition of real estate to any incorporated town or city in this state shall be required to file and record a regular plat of it in the office of the circuit clerk and recorder of the county in which the land is situated within thirty (30) days after the addition.

(b)(1) It shall be a misdemeanor for any person, joint-stock company, or corporation to sell or offer for sale any lot or block designated on the map or plat referred to in this section until it has been duly filed in the office of the circuit court and ex officio recorder as required in this section.

(2) Any person, joint-stock company, or corporation who shall violate the provisions of this section shall be guilty of a misdemeanor and on conviction shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100).

History. Acts 1907, No. 306, §§ 1, 3, p. 730; C. & M. Dig., §§ 7481, 7483; Pope's Dig., §§ 9524, 9526; A.S.A. 1947, §§ 19-401, 19-403.

CASE NOTES

Roadways.

A dedication of streets and alleys across a tract of land is not established merely by proof of making and recording the plat

where the lands remain enclosed by the original owner. *Balmat v. City of Argenta*, 123 Ark. 175, 184 S.W. 445 (1916).

14-41-202. Certification of matters — Penalty.

(a) It shall be the duty of the clerk of the circuit court when any map or plat of any addition to any city or incorporated town in the State of Arkansas has been filed in his office as required by § 14-41-201(a) to forthwith certify under his hand and seal of office, to the county clerk of the county, in those counties where there are both county and circuit clerks, the name of the addition and the date of the filing of the plat.

(b) The failure of the clerk to so certify the matters to the county clerk for thirty (30) days shall be a misdemeanor. On conviction, the clerk shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100).

History. Acts 1907, No. 306, § 2, p. 730; C. & M. Dig., § 7482; Pope's Dig., § 9525; A.S.A. 1947, § 19-402.

14-41-203. Entry on tax books required — Penalty.

(a) It shall be the duty of the county clerk on receiving the certificate provided for in § 14-41-202(a) to file it in his office. Thereafter, before he shall deliver the tax books to the assessor, he shall enter the number of each lot and block on the tax book for real estate as other real estate is entered, and it shall be assessed as other real estate of like character.

(b) In counties where there is no county clerk, it shall be the duty of the circuit clerks, before they shall thereafter deliver the tax books to the assessor, to enter the number of each lot and block appearing upon any map or plat of any addition to any city or incorporated town in this state which is filed in their office on the tax books for real estate, and it shall be assessed as other real estate of like character.

(c) The failure of any county clerk to comply with the provisions of subsections (a) and (b) of this section shall be a misdemeanor. On conviction, he shall be fined not less than ten dollars (\$10.00) nor more than twenty-five dollars (\$25.00).

History. Acts 1907, No. 306, §§ 4-6, p. 730; C. & M. Dig., §§ 7484-7486; Pope's Dig., §§ 9527-9529; A.S.A. 1947, §§ 19-404 — 19-406.

SUBCHAPTER 3 — REDUCTION TO ACREAGE

SECTION.

- 14-41-301. Applicability.
- 14-41-302. Right generally.
- 14-41-303. Parties to petition.

SECTION.

- 14-41-304. Owners of parts.
- 14-41-305. Notice of petition.
- 14-41-306. Hearing and order.
- 14-41-307. Appeals.

Cross References. Validation of return to acreage of platted land outside cities or towns, § 14-18-110.

Effective Dates. Acts 1929, No. 91, § 8: approved Mar. 7, 1929. Emergency

clause provided. "This act being necessary for the immediate preservation of the public peace, health and safety of the State of Arkansas, shall be in force and effect from and after its passage."

14-41-301. Applicability.

This subchapter shall not apply to any part of an addition or division less than one-third ($\frac{1}{3}$) of the whole as shown by the original plat filed in the office of the circuit clerk.

History. Acts 1929, No. 91, § 4; Pope's Dig., § 9517; A.S.A. 1947, § 19-410.

14-41-302. Right generally.

The owner of any addition or division to any city or incorporated town in this state where no lots or blocks, or any part thereof, have been sold and the streets and alleys have not been used by the public for the last seven (7) years prior to the filing of the petition shall have the right to reduce the addition or division to acreage by petition to the county court where the property is situated.

History. Acts 1929, No. 91, § 1; Pope's Dig., § 9514; A.S.A. 1947, § 19-407.

CASE NOTES

Cited: Rinke v. Weedman, 232 Ark. 900, 341 S.W.2d 44 (1960).

14-41-303. Parties to petition.

If at any time one (1) person owns, or two (2) or more persons own jointly or as tenants in common, or a corporation owns all the lots and blocks in any addition or division to any city or incorporated town in this state, the streets and alleys of which have not been used by the public for the last seven (7) years prior to the filing of the petition, then the person, persons, or corporation may have the addition or division reduced to acreage by proper petition to the county court.

History. Acts 1929, No. 91, § 2; Pope's Dig., § 9515; A.S.A. 1947, § 19-408.

14-41-304. Owners of parts.

The owners of any part of an addition or division shall have the right to have it reduced to acreage, as in the cases provided in §§ 14-41-302 and 14-41-303. However, the lots and blocks shall be contiguous. No streets and alleys shall be included in the order reducing the parts of additions or divisions to acreage unless the owners shall have the legal

title and be in the actual possession of all the lots and blocks surrounding the streets and alleys.

History. Acts 1929, No. 91, § 3; Pope's Dig., § 9516; A.S.A. 1947, § 19-409.

14-41-305. Notice of petition.

Upon the filing of a petition, the county court shall immediately cause notice to be published for two (2) consecutive weeks by at least two (2) insertions in some newspaper published in the county having a bona fide circulation therein, stating the substance contained in the petition.

History. Acts 1929, No. 91, § 5; Pope's Dig., § 9518; A.S.A. 1947, § 19-411.

14-41-306. Hearing and order.

The county court shall hear the petition at the first day of the court held after publication of the notice filed under § 14-41-305 if not continued for cause and shall, upon proper showing, order that the addition or division, or part thereof, be reduced to acreage. It shall thereafter be assessed as acreage for taxation of all kinds.

History. Acts 1929, No. 91, § 6; Pope's Dig., § 9519; A.S.A. 1947, § 19-412.

14-41-307. Appeals.

Any person aggrieved by an order under § 14-41-306 may appeal to the circuit court in the manner provided by law for appeals from the county court.

History. Acts 1929, No. 91, § 7; Pope's Dig., § 9520; A.S.A. 1947, § 19-413.

CHAPTER 42

GOVERNMENT OF MUNICIPALITIES GENERALLY

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ELECTIONS.
3. CHARTERS FOR CITIES OF THE FIRST AND SECOND CLASS.
4. DEPARTMENTS OF PUBLIC SAFETY.

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., § 98 et seq.

C.J.S. 62 C.J.S., Mun. Corp., § 106 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 14-42-101. Savings provision.
- 14-42-102. Corporate authority of cities.
- 14-42-103. Vacancies in municipal offices.
- 14-42-104. Vacancies in certain alderman positions.
- 14-42-105. Appointments of officers by council.
- 14-42-106. Oath and bond required.
- 14-42-107. Interest in offices or contracts, etc., by council members prohibited.
- 14-42-108. Prohibited actions by municipal officials or employees — Penalty.
- 14-42-109. Removal of elective or appointed officers.
- 14-42-110. Appointment and removal of department heads.

SECTION.

- 14-42-111. Mayor of city of the second class or town unable to perform duties.
- 14-42-112. Municipal attorneys for cities of the second class or towns.
- 14-42-113. Salaries of officials.
- 14-42-114. Social security for municipal employees.
- 14-42-115. Volunteer fire fighter on governing body.
- 14-42-116. Retirement systems and benefits.
- 14-42-117. Election of retirement benefits.

Preambles. Acts 1945, No. 10 contained a preamble which read: "Whereas, the municipalities of this state are now losing competent employees to private industry who are attracted not so much by high wages as by the fact that they desire the protection afforded by being included under a retirement system; and

"Whereas, qualified individuals are refusing to enter municipal employment, because such protection is not given; and

"Whereas, municipal employees are not now covered by Social Security; and

"Whereas, municipal payrolls now include many elderly employees whose productive capacity has been impaired; and

"Whereas, the retention of aged individuals tends to induce other employees on the same job to slacken their efforts to the same level of production..."

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

Acts 1883, No. 120, § 2: effective on passage.

Acts 1895, No. 54, § 5: effective on passage.

Acts 1919, No. 230, § 4: approved Mar. 11, 1919. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage."

Acts 1923, No. 153, § 6: approved Feb. 21, 1923. Emergency clause provided: "This act being necessary for the immedi-

ate preservation of the public peace, health and safety an emergency is hereby declared to exist and this act shall be in force from and after its passage."

Acts 1929, No. 115, § 2: effective on passage.

Acts 1941, No. 288, § 4: Mar. 26, 1941. Emergency clause provided: "It is hereby ascertained and declared that there is much suffering in the State which can be relieved through Community Chest and other charitable organizations. These organizations are badly in need of funds, and, this act being necessary for the preservation of the public peace, health and safety, an emergency is declared to exist, and this act shall become effective from and after its passage and approval."

Acts 1945, No. 10, § 2: approved Jan. 31, 1945. Emergency clause provided: "That this act shall take effect from and after its passage, the public welfare requiring it."

Acts 1963, No. 182, § 2: approved Mar. 7, 1963. Emergency clause provided: "Under existing law, considerable doubt exists as to the validity of business transactions between a municipal corporation and various banks, utilities, newspapers, and other services institutions located within the municipality and in which Aldermen or members of municipal councils are minority stockholders so that the right of the municipal corporation to do business of this nature with any local institution is

often brought into question, making this Act necessary to protect the public peace, health, safety and welfare; and an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage."

Acts 1975, No. 161, § 3: Feb. 12, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is necessary to the efficient and effective operation of municipal government in certain second-class cities and incorporated towns that there be selected an official city attorney to represent such cities; that this Act is designed to permit the appointment of such attorneys in those cities in which such attorneys have not been elected, and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 9, § 4: Jan. 27, 1977. Emergency clause provided: "Whereas, in many cities and towns vacancies exist on municipal governing bodies and as a result of existing law a unanimous vote or an extraordinary majority is required to make appointments to fill such vacancies and therefore these municipalities are sometimes hampered in their ability to adequately render municipal services for the people of this State; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate protection of the public peace, health and safety shall take effect immediately upon its passage and approval."

Acts 1981, No. 124, § 3: Feb. 19, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the public interest that the citizens of this State be encouraged to participate in public affairs; that due to confusion in the present laws, many persons who serve as volunteer firemen are uncertain as to whether such service limits or restricts their authority to seek election to, and to serve on, the governing body of the municipality in which they serve as volunteer firemen; that it is the consensus of the General Assembly that the small amount of pay received by volunteer firemen only when they are called upon to render fire service duties does not constitute a conflict of interest within any

statutory or constitutional limitation, and that the immediate passage of this Act is necessary to clarify the authority of volunteer firemen to serve on the governing body of the municipality wherein the firemen serve. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 303, § 4: Mar. 4, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that when vacancies exist in the position of alderman and the remaining term exceeds one year in cities of over 50,000 having a mayor-council form of government and in which the electors of each ward elect at least one (1) alderman, the filling of the vacant position by appointment deprives the people of a voice in filling what should be an elected position; that this Act is designed to correct this undesirable situation and should be given effect immediately. Therefore, an emergency is declared to exist, and this Act being necessary for the immediate protection of the public peace, health and safety shall take effect immediately upon its passage and approval."

Acts 1981, No. 485, § 3: Mar. 13, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly of the state of Arkansas that the provisions of Arkansas Statutes 19-909 which provide that no member of a city council shall be interested in the profits of any contract for work or services performed for the city or town are unduly restrictive especially as applied by small cities and towns where a member of the council may have a majority interest in the only business in town offering the supplies, equipment or services covered by the proposed contract; that the public interest will best be served by permitting council members to have a pecuniary interest in contracts entered into with the city or town if the governing body of the city specifically authorizes the same by ordinance; that this Act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health

and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 914, § 7: Apr. 5, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that in some instances vacancies in the positions of the department heads of some cities are not being timely filled; that this results in confusion and inefficiency within the municipal government; that this act provides a mechanism whereby the vacancies in department head positions may be filled more efficiently in a more timely manner; therefore this act should go into effect as soon as possible. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after passage and approval.”

Acts 1995 (1st Ex. Sess.), No. 13, § 13: Oct. 23, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the current system of funding the state judicial system has created inequity in the level of judicial services available to the citizens of the state; and it is further determined that the current method of financing the state judicial system has become so complex as to make the administration of the system impossible, and the lack of reliable data on the current costs of the state judicial system prohibits any comprehensive change in the funding of the system at this time. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

RESEARCH REFERENCES

ALR. Modern status of rule excusing governmental unit from tort liability on theory that only general, not particular, duty was owed under circumstances. 38 ALR 4th 1194.

Validity and construction of statute or ordinance limiting the kinds or amount of actual damages recoverable in tort action

against governmental unit. 43 ALR 4th 19.

Municipal liability for negligent fire inspection and subsequent enforcement. 69 ALR 4th 739.

Am. Jur. 56 Am. Jur. 2d, Mun. Corp. & Coun., §125 et seq.

14-42-101. Savings provision.

Any municipal corporation in which, under its former organization prior to March 9, 1875, by any law or charter regulating any literary, charitable, or benevolent institution, vested any power of appointing officers of supervision or control, shall continue to hold and possess the like power and authority in every respect.

History. Acts 1875, No. 1, § 32, p. 1; C. & M. Dig., § 7519; Pope's Dig., § 9579; A.S.A. 1947, § 19-906.

14-42-102. Corporate authority of cities.

The corporate authority of cities that are organized shall be vested in one (1) principal officer, to be called the mayor, and one (1) board of aldermen, to be called the city council, together with such other officers as are mentioned in this subtitle or may be created under its authority.

History. Acts 1875, No. 1, § 5, p. 1; C. & M. Dig., § 7459; Pope's Dig., § 9492; A.S.A. 1947, § 19-901.

Cross References. Corporate authority of towns, § 14-45-101.

CASE NOTES

ANALYSIS

In general.
Mayors.

In General.

No one but the state may challenge the existence of a municipal corporation, nor take advantage of the abandonment of corporate rights. *Town of Searcy v. Yarnell*, 47 Ark. 269, 1 S.W. 319 (1886); *Town of Madison v. Bond*, 133 Ark. 527, 202 S.W. 721 (1918).

Mayors.

The mayor of a second class city is a member of the council of a second class city and thereby entitled to vote on the municipal council's ordinances. *Clark v. Mahan*, 268 Ark. 37, 594 S.W.2d 7 (1980).

Cited: *Leadership Roundtable v. City of Little Rock*, 499 F. Supp. 579 (E.D. Ark. 1980).

14-42-103. Vacancies in municipal offices.

(a) Vacancies in municipal offices which are authorized by state law to be filled by appointment by the city or town governing body shall require a majority vote of the remaining members of the governing body. However, there must always be a majority of a quorum of the whole number of the governing body to fill the vacancy.

(b) The governing body may appoint any qualified elector, including members of a governing body, to fill the vacancy. However, a member of the governing body shall not vote on his own appointment.

History. Acts 1977, No. 9, §§ 1, 2; 1981, No. 303, § 2; A.S.A. 1947, § 19-905.1.

CASE NOTES

Resignation.

Arkansas law does not designate who is the proper authority to accept a municipal

officer's resignation. *Hopper v. Garner*, 328 Ark. 516, 944 S.W.2d 540 (1997).

14-42-104. Vacancies in certain alderman positions.

When a vacancy occurs in any position of alderman in a city having a population of fifty thousand (50,000) or more, according to the most recent federal decennial census and having a mayor-council form of government in which the electors of each ward elect one (1) or more aldermen, a new alderman shall be chosen in the following manner:

(1) If the unexpired portion of the term of alderman exceeds one (1) year, a successor shall be elected by a vote of the electors of the ward. The city council shall order a special election to be held within sixty (60) days of the date the vacancy occurs;

(2) If the unexpired portion of the term of alderman is one (1) year or less, a successor shall be chosen by a majority vote of the members of the city council.

History. Acts 1977, No. 9, §§ 1, 2; 1981, No. 303, § 2; A.S.A. 1947, § 19-905.1.

14-42-105. Appointments of officers by council.

(a) All appointments of officers by any council of a municipal corporation shall be made viva voce, and the concurrence of a like majority shall be required.

(b) On the votes resulting in the appointment, the names of those voting and for whom they voted shall be recorded, and all such voting shall be public.

History. Acts 1875, No. 1, § 29, p. 1; C. & M. Dig., § 7518; Pope's Dig., § 9578; A.S.A. 1947, § 19-905.

CASE NOTES

ANALYSIS

In general.
Jurisdiction.
Record.
Voting.

In General.

Election of member to board by oral motion duly passed by municipal council is valid. *Steward v. Rust*, 221 Ark. 286, 252 S.W.2d 816 (1952).

Jurisdiction.

Courts of equity will not interfere by injunction to determine questions concerning the appointment or election of

public officers or their title to office. *Davis v. Wilson*, 183 Ark. 271, 35 S.W.2d 1020 (1931).

Record.

Appointment to fill a vacancy must be proved by record itself, in the absence of proof that the record has been lost or destroyed. *Hill v. Rector*, 161 Ark. 574, 256 S.W. 848 (1923).

Voting.

A motion and a second are not required for a valid city council vote. *O'Brien v. City of Greers Ferry*, 293 Ark. 19, 732 S.W.2d 146 (1987).

14-42-106. Oath and bond required.

(a) All officers elected or appointed in any municipal corporation shall take the oath or affirmation prescribed by the Arkansas Constitution for officers.

(b) The aldermen or council of a municipal corporation may require from the officers, as they think proper, a bond, with good and sufficient security with proper penalty, for the faithful discharge of their office and duty.

(c) The council or aldermen shall have power to declare the office of any person elected vacant who shall fail to take the oath of office or give the bond required in this section within ten (10) days after he shall have been notified of his election or appointment and proceed to appoint as in other cases of vacancy.

History. Acts 1875, No. 1, § 73, p. 1; C. & M. Dig., § 7517; Pope's Dig., § 9577; A.S.A. 1947, § 19-904.

Cross References. Self-Insured Fidelity Bond Program, § 21-2-701 et seq.

Oath of office prescribed by Constitution, Ark. Const., Art. 19, § 20.

CASE NOTES

Bond.

Official bond containing exact requirements of statute under which it is executed, followed by other provisions not required or recognized by statute, is a statutory bond, and its provisions not in accord with the statute should be treated as surplusage. *Jones v. Hadfield*, 192 Ark. 224, 96 S.W.2d 959 (1936), cert. denied, 300 U.S. 667, 57 S. Ct. 506, 81 L. Ed. 875 (1937).

Striking out of statutory bond, so intended by the parties, a conflicting clause incorporated therein contrary to statute,

was held not to infringe upon the rights of the parties to contract. *Jones v. Hadfield*, 192 Ark. 224, 96 S.W.2d 959 (1936), cert. denied, 300 U.S. 667, 57 S. Ct. 506, 81 L. Ed. 875 (1937).

Surety company executing municipal officer's bond is charged with knowledge at the time of the execution of the bond of what the law requires. *Jones v. Hadfield*, 192 Ark. 224, 96 S.W.2d 959 (1936), cert. denied, 300 U.S. 667, 57 S. Ct. 506, 81 L. Ed. 875 (1937).

Cited: *Thomas v. Sitton*, 213 Ark. 816, 212 S.W.2d 710 (1948).

14-42-107. Interest in offices or contracts, etc., by council members prohibited.

(a)(1) No alderman or member of any council of a municipal corporation shall, during the term for which he shall have been elected or one (1) year thereafter, be appointed to any municipal office which was created or the emoluments of which shall have been increased during the time for which he shall have been elected.

(2) No alderman or council member shall be appointed to any municipal office, except in cases provided for in this subtitle, during the time for which he may have been elected.

(b)(1) No alderman or council member shall be interested, directly or indirectly, in the profits of any contract for the furnishing of supplies, equipment, or services to the municipality unless the governing body of the city shall have enacted an ordinance specifically permitting aldermen or council members to conduct business with the city and prescribing the extent of this authority.

(2) The prohibition prescribed in this subsection shall not apply to contracts for the furnishing of supplies, equipment, or services to be performed for a municipality by a corporation in which no alderman or council member holds any executive or managerial office, or by a corporation in which a controlling interest is held by stockholders who are not aldermen or council members.

History. Acts 1875, No. 1, § 86, p. 1; C. & M. Dig., § 7520; Pope's Dig., § 9580;

Acts 1963, No. 182, § 1; 1981, No. 485, § 1; A.S.A. 1947, § 19-909.

RESEARCH REFERENCES

Ark. L. Rev. The Contractual and Quasi-Contractual Liability of Arkansas Local Government Units, 20 Ark. L. Rev. 292.

Official misconduct under the Arkansas Criminal Code, 30 Ark. L. Rev. 160.

CASE NOTES

ANALYSIS

Purpose.
Common law.
Contracts.
Corporate interests.
Municipal offices.

Purpose.

By enacting this section, the General Assembly has made an expression of public policy to the effect that aldermen or members of a municipal council are prohibited from entering into contracts with themselves on behalf of the municipality for the purchase of "materials" or for "work or services to be performed for the corporation." Price v. Edmonds, 232 Ark. 381, 337 S.W.2d 658 (1960).

Common Law.

Common-law rule prohibited municipal officers from self-dealing in regard to the sale of materials as well as in contracts or jobs for work or services. Contracts for materials were held not prohibited by this section, but there could be no reason for invoking a maxim to give validity to a contract void at common law as against public policy simply because it did not fall

within the prohibitions of the statute. Price v. Edmonds, 232 Ark. 381, 337 S.W.2d 658 (1960) (decision prior to 1981 amendment).

Contracts.

An ordinance leasing municipal utility plant to the mayor and aldermen of the city is void. Rogers v. Sangster, 180 Ark. 907, 23 S.W.2d 613 (1930).

Corporate Interests.

Ratification by municipal council of a contract between the municipality and a corporation in which members of the council were stock holders was held prohibited. Gantt v. Arkansas Power & Light Co., 189 Ark. 449, 74 S.W.2d 232 (1934), aff'd, 194 Ark. 925, 109 S.W.2d 1251 (1937) (decision prior to 1963 amendment).

Municipal Offices.

Mayor could not act as manager of municipal system and draw a salary as such while, at the same time, occupying the office of mayor, as such a double role is inconsistent and compatible. Davis v. Doyle, 230 Ark. 421, 323 S.W.2d 202 (1959).

14-42-108. Prohibited actions by municipal officials or employees — Penalty.

(a)(1) It shall be unlawful for any official or employee of any municipal corporation of this state to receive or accept any water, gas, electric current, or other article or service from the municipal corporation, or any public utility operating therein, without paying for it at the same rate and in the same manner that the general public in the municipal corporation pays therefor.

(2)(A) This section shall not affect rights to free or other special services given to certain municipal officials and employees under the terms of franchises in effect with public utilities in this state.

(B) This section shall not apply to any city official or employee of any municipal corporation of this state as to free streetcar transportation.

(b)(1) It shall be unlawful for any city official or employee of any municipal corporation in this state to furnish or give to any person,

concerns, or corporations any property belonging to the municipal corporation, or service from any public utility owned or operated by the municipal corporation, unless payment is made therefor to the municipal corporation at the usual and regular rates, and in the usual manner, except as provided in subsection (a) of this section.

(2) The waterworks commission of cities of the first class shall be authorized to make donations of money from the revenue of municipal waterworks systems to the local United Way campaign or other citywide nonsectarian, incorporated charitable organizations.

(c)(1) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than ten dollars (\$10.00) nor more than two hundred fifty dollars (\$250).

(2) Conviction shall ipso facto remove the official or employee from the municipal office or position held by him and shall render him ineligible to thereafter hold any office or position under, or in connection with, the municipal corporation.

History. Acts 1919, No. 230, §§ 1-3; C. & M. Dig., §§ 7522-7524; Pope's Dig., §§ 9582-9584; Acts 1941, No. 288, § 1; A.S.A. 1947, §§ 19-916 — 19-918.

Cross References. Penalty provided for in this section not applicable to commissioners making donations to local United Way campaigns, § 14-234-307.

RESEARCH REFERENCES

Ark. L. Rev. Official misconduct under the Arkansas Criminal Code, 30 Ark. L. Rev. 160.

CASE NOTES

ANALYSIS

Constitutionality.

Applicability.

United Way.

Violation found.

Constitutionality.

This section is not unconstitutional as a denial of equal protection of the laws; the coupling of the grant of power to a municipal officer with a provision of ineligibility to hold office if that power is abused is rationally related to a legitimate state purpose. *Allen v. State*, 327 Ark. 350, 939 S.W.2d 270 (1997).

Applicability.

In prosecution for drunken driving this section had no applicability where defendant, requested to have the municipality that was prosecuting him turn over a perchlorate tube which the police had used in making a blood-alcohol test. *City*

of *Rogers v. Municipal Court*, 259 Ark. 43, 531 S.W.2d 257 (1976).

United Way.

The 1941 amendment of this section was held ineffective to authorize municipality to make a binding subscription to Community Chest (now United Way) payable out of waterworks revenues where this fund was pledged prior to enactment of the amendment for payment of revenue bonds under trust indenture, since payment of the subscription would be a diversion of the security and an impairment of the obligation, the General Assembly was without power to authorize the impairment of the contract, and the fact that revenue is amply sufficient to pay all obligations was held immaterial. *City of Little Rock v. Community Chest*, 204 Ark. 562, 163 S.W.2d 522 (1942).

Municipality had authority under this section, as amended in 1941, to subscribe

to Community Chest (now United Way), there being funds in the municipal treasury sufficient for that purpose. *Neel v. City of Little Rock*, 204 Ark. 568, 163 S.W.2d 525 (1942).

Violation Found.

Evidence was sufficient to support a guilty verdict against the mayor for receiving sewer services for his store without paying at the same rate and in the

same manner as the general public. *Allen v. State*, 327 Ark. 350, 939 S.W.2d 270 (1997).

Evidence was sufficient to sustain a conviction against the mayor for adjusting bills of persons using water and sewer services so that they were not paying at the regular rates. *Allen v. State*, 327 Ark. 350, 939 S.W.2d 270 (1997).

14-42-109. Removal of elective or appointed officers.

(a)(1)(A) If the mayor or police judge, member of the city council, or any other elective officer of any city of the first class or second class or incorporated town in this state shall wilfully and knowingly fail, refuse, or neglect to execute, or cause to be executed, any of the laws or ordinances within their jurisdiction, they shall be deemed guilty of nonfeasance in office.

(B)(i) It shall be the duty of the circuit court of any county within which any officer may be commissioned and acting, upon indictment charging any such officer with nonfeasance in office, to hear and determine the charges.

(ii) If, upon hearing, the charges are proved to be true, the court shall enter a judgment of record removing the guilty officer from office.

(2) The council of any city or incorporated town may provide, by proper ordinance, for the removal of any appointive officer upon a majority vote of the council.

(b)(1) Upon the entering of judgment as provided in subdivision (a)(1) of this section, the office of mayor or police judge shall become vacant.

(2)(A) It shall be the duty of the clerk of the circuit court to immediately make out and deliver to the Governor a true and certified copy of the judgment.

(B) Thereupon, it shall be the duty of the Governor to at once appoint and commission a mayor or police judge for the city or town to fill the vacancy until his successor is elected at the next regular election and qualified.

(c) Any mayor or police judge so removed from office shall have the right of appeal to the Supreme Court of the state. However, no appeal shall have the effect of suspending the judgment of removal of the circuit court. If the judgment is reversed, it shall have the effect of reinstating the officer to his office.

History. Acts 1895, No. 54, §§ 1-4, p. 69; C. & M. Dig., §§ 7525-7527; Acts 1929, No. 115, § 1; Pope's Dig., §§ 9585-9587; A.S.A. 1947, §§ 19-919 — 19-921.

CASE NOTES

ANALYSIS

Constitutionality.

Hearing and determination.

Nonfeasance.

Removal.

Constitutionality.

An ordinance limiting the city attorney's salary to \$1.00 per annum when in fact the city attorney was uncontested in his bid for the election, passed simultaneously with an ordinance removing the city attorney from office on the eve of the election, was punitive in that it intended to constructively bar him from assuming the position to which he was duly elected by the people; accordingly, the first ordinance and its implementing resolution were unconstitutional as bills of attainder. *Crain v. City of Mt. Home*, 611 F.2d 726 (8th Cir. 1979).

Hearing and Determination.

A writ of prohibition would not lie to a circuit court to prohibit a circuit judge

from proceeding to try the mayor of a city for nonfeasance in office without a jury; such an action of the circuit judge, if erroneous, was reversible only on appeal. *McClendon v. Wood*, 125 Ark. 155, 188 S.W. 6 (1916).

Nonfeasance.

The enforcement of the laws rests on the mayor, police judge, and other elective officials. *Rowland v. State*, 213 Ark. 780, 213 S.W.2d 370 (1948), cert. denied, 336 U.S. 918, 69 S. Ct. 641, 93 L. Ed. 1081.

Removal.

The actions of a municipal council in impeaching a municipal judge are judicial in their nature, and where the accused has been granted a public hearing and has been represented by council, it is proper for the council to retire and consider their verdict in secret. *Faucette v. Gerlach*, 132 Ark. 58, 200 S.W. 279 (1918).

Cited: *Clark v. Mahan*, 268 Ark. 37, 594 S.W.2d 7 (1980).

14-42-110. Appointment and removal of department heads.

(a)(1) Mayors in cities of the first class and second class and incorporated towns shall have the power to appoint and remove all department heads, including city and town marshals when an ordinance has been passed making city and town marshals appointed, unless the city or town council shall, by a two-thirds (2/3) majority of the total membership of the council, vote to override the mayor's action.

(2) Provided, however, that in cities of the first class and second class with civil service commissions, the governing body of the city may, by ordinance, delegate the authority to appoint and remove the heads of the police and fire departments to the city's civil service commission.

(b) City managers in cities having a city manager form of government shall have the power to appoint and remove all department heads. In cities with a city manager form of government and with civil service commissions, the civil service commission shall have the power to override the city manager's appointment or removal of the police or fire chief by a majority vote of the total membership of the commission.

(c) The provisions of this section shall not apply to department heads not under the control of the governing body of the city and shall not apply to cities having a city administrator form of government.

History. Acts 1981, No. 795, §§ 1, 3; A.S.A. 1947, § 19-1013.1; Acts 1995, No. 534, § 1; 1995, No. 914, § 1.

Amendments. The 1995 amendment

by Nos. 523 and 914 deleted "Unless otherwise provided by state law" from the beginning in (a)(1); added (a)(2); inserted present (b), redesignating former (b) as

(c); and, in (c), inserted "shall not apply to department heads not under the control of the governing body of the city and" and substituted "shall not apply to cities hav-

ing a city administrator" for "shall not be applicable to cities having a city manager."

CASE NOTES

ANALYSIS

Applicability.

Interest in employment.

Applicability.

The 1995 amendment to this section applies to persons terminated after its amendment, including those hired before its amendment. *Sykes v. City of Gentry*, 114 F.3d 829 (8th Cir. 1997).

Interest in Employment.

Although police chief was hired before 1995, his property interest in his position

was eliminated in 1995 when the General Assembly amended this section. *Sykes v. City of Gentry*, 114 F.3d 829 (8th Cir. 1997).

Prior to the amendment of this section in 1995, §§ 14-43-504(e)(2) and former § 14-43-505 created a property interest for a police chief in the position. *Sykes v. City of Gentry*, 114 F.3d 829 (8th Cir. 1997).

14-42-111. Mayor of city of the second class or town unable to perform duties.

Whenever the mayor of an incorporated town or city of the second class is unable to perform the functions of his office, or is absent and cannot be obtained, the recorder of the town or city shall be authorized and empowered to perform the functions of a magistrate during the disability or absence of the mayor, with all the power and jurisdiction of the mayor, to all intents and purposes whatever.

History. Acts 1883, No. 120, § 1, p. 297; C. & M. Dig., § 7673; Pope's Dig., § 9795; A.S.A. 1947, § 19-910.

14-42-112. Municipal attorneys for cities of the second class or towns.

(a)(1) All cities of the second class and incorporated towns within the State of Arkansas may elect a municipal attorney at the time of the election of other officers of these cities of the second class and incorporated towns, if it is not established by ordinance that the office of the city attorney will be appointed.

(2) All municipal attorneys elected under the provisions of this section shall be regularly licensed attorneys of this state. When no attorney resides within the limits of the city or town or when no resident attorney has been elected as municipal attorney, the mayor and city or town council may appoint any regularly licensed attorney of this state to serve as the municipal attorney.

(b) Any municipal attorney elected or appointed under the provisions of this section shall subscribe to the oath of office as all other officers of these cities or towns.

(c) All municipal attorneys are authorized to file information for the arrest of any person for the violation of any ordinance of the city or town or of the laws of this state which are violated within the limits of the city or town.

(d)(1) The duties of the municipal attorney shall be to represent the city or town in all actions, both civil and criminal.

(2)(A) It shall be the duty of the municipal attorney to:

(i) Advise with all city or town officials at any time needed;

(ii) Prepare all legal papers, blank forms, etc.;

(iii) File a complete report of his work with the city or town council at the end of each year; and

(iv) If requested to do so, furnish all information in his possession to the state courts for the prosecution of cases in the state courts.

(B) Nothing in this section shall prohibit the city or town council from prescribing other duties, and they are authorized to prescribe such other duties as they desire which shall be done by proper ordinance by the council.

History. Acts 1923, No. 153, §§ 1-5; Pope's Dig., §§ 9752-9756; Acts 1975, No. 161, §§ 1, 2; A.S.A. 1947, §§ 19-911 — 19-915; Acts 1993, No. 1306, § 8; 1995, No. 1256, § 20; 1995 (1st Ex. Sess.), No. 13, § 4; 1997, No. 645, § 1.

Amendments. The 1993 amendment inserted "pursuant to § 21-6-410" in the first sentence of (e).

The 1995 amendment by No. 1256, as amended by 1995 (1st Ex. Sess.), No. 13, § 4, repealed (e).

The 1997 amendment, in (a)(1) substi-

tuted "may elect" for "are empowered to elect", inserted "if it is not established by ordinance that the office of the city attorney will be appointed" and made stylistic changes.

Cross References. Attorney of cities of the second class and towns, § 14-88-406.

Election of attorney in cities of the first class, § 14-43-313.

Retirement benefits for city attorneys in cities of the first and second class, § 24-12-120.

CASE NOTES

ANALYSIS

Applicability.

Fees.

Vacancy.

Applicability.

This section is inapplicable to city attorney of Hot Springs. *Campbell v. City of Hot Springs*, 232 Ark. 878, 341 S.W.2d 225 (1960).

Fees.

Attorney who represented city in rate case could not recover fees out of refund decreed by Supreme Court, since there

was no agreement by customers of utility providing for deduction of attorney fee from refund. *City of Ft. Smith v. Southwestern Bell Tel. Co.*, 220 Ark. 70, 247 S.W.2d 474 (1952).

Vacancy.

This section does not require second-class cities to fill a vacancy in the city attorney's office in any particular manner. *Hopper v. Garner*, 328 Ark. 516, 944 S.W.2d 540 (1997).

Cited: *Hagen v. State*, 315 Ark. 20, 864 S.W.2d 856 (1993).

14-42-113. Salaries of officials.

The salaries of officials of cities of the first and second class and incorporated towns may be increased, but not decreased, during the term for which the officials have been elected or appointed.

History. Acts 1969, No. 249, § 1;
A.S.A. 1947, § 19-907.1.

CASE NOTES

Cited: Clark v. Mahan, 268 Ark. 37, 594
S.W.2d 7 (1980).

14-42-114. Social security for municipal employees.

Any municipality incorporated under the laws of the State of Arkansas shall have the power, by a majority vote of its city council or legislative body, to provide for establishing and maintaining a system of social security or old age pensions, or both, for its employees that are not covered by social security or old age pension legislation under such terms and conditions as the city council or legislative body may enact.

History. Acts 1945, No. 10, § 1; A.S.A.
1947, § 19-908.

Cross References. Workers' compensation coverage, § 14-60-101 et seq.

14-42-115. Volunteer fire fighter on governing body.

(a)(1) It is lawful for a volunteer fire fighter in any city of the first or second class or incorporated town in this state to seek election to, and if elected, to serve as a member of the city council or other governing body of the city or town.

(2) This service shall not be deemed a conflict of interest and shall not be prohibited by the civil service regulations of any city or town.

(b) A person may serve and receive compensation as a member of the governing body of any city of the first or second class or incorporated town and simultaneously serve as a volunteer fire fighter and receive compensation as a fire fighter.

(c) The provisions of this section shall not apply after August 13, 1993, to any city having a city administrator form of government.

History. Acts 1981, No. 124, § 1; 1981,
No. 440, § 1; A.S.A. 1947, §§ 19-943, 19-
944; Acts 1993, No. 476, § 1.

Amendments. The 1993 amendment
added (c).

14-42-116. Retirement systems and benefits.

No first-class city, second-class city, or incorporated town, regardless of the form of government, shall hereafter establish any retirement benefit system or plan for members of the governing body of the city or town except first-class cities, second-class cities, or towns which had

established such system or plan prior to July 3, 1989. However, all systems and plans in existence on July 3, 1989, may continue.

History. Acts 1989, No. 308, § 1.

14-42-117. Election of retirement benefits.

Notwithstanding any other law to the contrary, any employee of a first-class city, second-class city, or incorporated town, and any elected official of a first-class city, second-class city, or incorporated town who is entitled by an act of the General Assembly to retirement benefits for service as such employee or elected official and who also participates in another retirement plan established by the city for the same period of service shall be entitled to only one (1) retirement benefit for the same period of service to the municipality, provided that no elected official may withdraw in a lump sum or roll over into a private account any accumulated benefits established by the municipality for which the official was employed and at the same time receive a pension as provided for under an act of the General Assembly, and the employee or elected official may choose whether to receive the retirement benefit provided by law or provided by the plan offered by the municipality.

History. Acts 1989, No. 723, § 1; 1991, No. 604, § 1.

SUBCHAPTER 2 — ELECTIONS

SECTION.

- 14-42-201. Election of municipal officers generally.
- 14-42-202. [Repealed.]
- 14-42-203. Special elections of city mayors.
- 14-42-204. Election returns generally.

SECTION.

- 14-42-205. Elections in municipalities situated in different counties.
- 14-42-206. Municipal primary elections — Nominating petitions.

Cross References. Conduct of elections, § 7-5-301 et seq.

Elections in cities of the first class, §§ 14-43-201 et seq. and 14-43-301 et seq.

Elections in incorporated towns, §§ 14-45-102, 14-45-104, 14-45-108.

Elections in cities of the second class, §§ 14-44-103, 14-44-105, 14-44-111, 14-44-115.

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

14-42-201. Election of municipal officers generally.

(a) The general election for the election of municipal officials in all cities and incorporated towns shall be held on the Tuesday following the first Monday in November.

(b) All municipal officials of the cities and towns of the State of Arkansas shall take office January 1 of the year following their election.

(c) [Repealed.]

(d) In addition to other residency requirements imposed by state law for municipal office holders, candidates for the positions of mayor, clerk, recorder or treasurer must reside within the corporate municipal limits at the time they file as a candidate and must continue to reside within the corporate limits to retain elective office. In cities of the first and second class, candidates for the position of alderman shall reside within the corporate limits and their respective wards at the time they file as a candidate for alderman and when holding that office.

History. Acts 1949, No. 307, §§ 1-3; A.S.A. 1947, §§ 19-902.1 — 19-902.3; Acts 1995, No. 555, § 1; 1995, No. 671, § 1.

Publisher's Notes. The former last part of subsection (c) provided that all officials elected at general municipal elections then serving four-year terms should continue in office until their successors are elected at the first general election

following the expiration of their terms and assume the offices on January 1 of the year after the date of the general election, to be elected every four years thereafter.

Amendments. The 1995 amendment by No. 555 repealed (c).

The 1995 amendment by No. 671 added (d).

CASE NOTES

Cited: *Whittaker v. Carter*, 238 Ark. 1074, 386 S.W.2d 498 (1965).

14-42-202. [Repealed.]

Publisher's Notes. This section, concerning election of governing boards of certain cities, was repealed by Acts 1995, No. 555, § 1. The section was derived

from Acts 1977, No. 808, §§ 1-5; 1983, No. 647, § 1; A.S.A. 1947, §§ 19-902.5 — 19-902.9; Acts 1987, No. 840, § 1; 1991, No. 786, § 13.

14-42-203. Special elections of city mayors.

(a) Special elections of mayors of cities of the first and second class shall be held at such time and place as the council shall direct.

(b) In all cities there shall be a place appointed in each ward for holding elections, except in cities of the second class electing their aldermen citywide, where there may be one (1) public place only for holding elections.

(c) Any person who, at the time of the election of municipal officers, is a qualified elector and registered to vote in the city precinct where he resides shall be deemed a qualified elector.

(d) All elections shall be held and conducted in the manner prescribed by law for holding state and county elections, so far as the laws may be applicable.

History. Acts 1875, No. 1, § 71, p. 1; C. & M. Dig., § 7515; Acts 1937, No. 259, § 1; Pope's Dig., § 9574; Acts 1959, No. 114, § 1; 1985, No. 422, § 1; A.S.A. 1947, § 19-902; Acts 1997, No. 645, § 2.

Amendments. The 1997 amendment deleted "so that at least sixty (60) days notice thereof shall be given" at the end of (a).

CASE NOTES

Qualified Electors.

Where alderman had moved to another state and voted there, even though he claimed he had never changed his residence from Arkansas, there was substantial evidence to support judgment that he was ineligible as alderman because he

was not a qualified elector of the city. *Charisse v. Eldred*, 252 Ark. 101, 477 S.W.2d 480 (1972) (decision prior to 1985 amendment).

Cited: *Whittaker v. Carter*, 238 Ark. 1074, 386 S.W.2d 498 (1965); *Clark v. Mahan*, 268 Ark. 37, 594 S.W.2d 7 (1980).

14-42-204. Election returns generally.

(a) The returns of all municipal corporations shall be made to the county board of election commissioners of the county in which the corporation is situated and shall be opened by them within three (3) days after their receipt.

(b)(1) The election board shall count the vote as it appears from the pollbooks, make an abstract thereof, and forward it to the mayor.

(2) The board shall, in like manner and without delay, furnish to each candidate elected a certificate of election or leave it at his usual place of abode.

History. Acts 1875, No. 1, § 72, p. 1; C. & M. Dig., § 7516; Pope's Dig., § 9576; A.S.A. 1947, § 19-903.

14-42-205. Elections in municipalities situated in different counties.

(a) In all municipal elections in municipalities situated in two (2) or more counties, a candidate for municipal office shall file for office with the county clerk of the county with the highest population of the municipality based upon the most recent city federal census. The county clerk of the county with the highest population shall certify the municipal candidate to the other counties.

(b) An independent candidate shall file a nominating petition with the county clerk with the highest population in the municipality. The county clerk of the county with the highest population in the municipality shall verify the signatures on a nominating petition from that county and, if necessary to verify signatures from a different county, shall forward the petition to the appropriate county clerk. That county clerk shall return the petition to the county clerk of the county with the highest population in the municipality within five (5) days of receipt. The county clerk of the county with the highest population in the municipality shall certify the sufficiency of the petition and, in order for the name of the candidate to be printed on all ballots, shall file the certification with each county board of election commissioners where the municipal election will be held.

(c) In all municipal elections in municipalities situated in two (2) or more counties, the county board of election commissioners in the county in which fewer residents of the municipality reside shall certify the

election results in municipal offices and issues in that portion of the municipality located in such county to the election board of the county in which the greater number of residents of the municipality reside.

(d) The county board of election commissioners in which the greater population of the municipality resides shall tabulate the votes cast on municipal offices and issues and shall certify the election results to the mayor of the municipality as provided in § 14-42-204.

History. Acts 1969, No. 450, § 1; A.S.A. 1947, § 19-903.1; Acts 1997, No. 729, § 1. inserted present (a) and (b) and redesignated the remaining subsections accordingly.
Amendments. The 1997 amendment

14-42-206. Municipal primary elections — Nominating petitions.

(a) The city or town council of any city or town with the mayor-council form of government, by resolution passed before January 1 of the year of the election, may request the county party committees of recognized political parties under the laws of the state to conduct party primaries for municipal offices for the forthcoming year. When the resolution has been adopted, the clerk or recorder shall mail a certified copy of the resolution to the chairmen of the county party committees and to the chairmen of the state party committees. Candidates nominated for municipal office by political primaries under this section shall be certified by the county party committees to the county board of election commissioners and shall be placed on the ballot at the general election ballot.

(b)(1) Any person desiring to become an independent candidate for municipal office in cities and towns with the mayor-council form of government shall, not more than eighty (80) days nor less than sixty (60) days prior to the general election by twelve o'clock noon, file with the county clerk the petition of nomination in substantially the following forms:

(A) For all candidates except aldermen in cities of the first and second class:

“PETITION OF NOMINATION

We, the undersigned qualified electors of the city (town) of, Arkansas, being in number not less than ten (10) for incorporated towns and cities of the second (2nd) class, and not less than thirty (30) for cities of the first (1st) class do hereby petition that the name of be placed on the ballot for the office of at the next election of municipal officials in 19

<u>NAME</u>	<u>STREET ADDRESS</u>	<u>VOTING PRECINCT</u>
.....

(B) For all candidates for aldermen in cities of the first and second class:

“PETITION OF NOMINATION

We, the undersigned qualified electors of Ward of the city of, Arkansas, being in number not less than ten (10) for incorpo-

rated towns and cities of the second (2nd) class, and not less than thirty (30) for cities of the first (1st) class hereby petition that the name of be placed on the ballot for the office of Alderman, Ward , position , of the next election of municipal officials in 19

<u>NAME</u>	<u>STREET ADDRESS</u>	<u>VOTING PRECINCT</u>
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.....”
(2) The county clerk shall determine whether the petition contains a sufficient number of qualified electors.

(3) Independent candidates for municipal office shall file a political practices pledge no later than sixty (60) days prior to the date of the general election by twelve o’clock noon.

(c)(1)(A) If no candidate receives a majority of the votes cast in the general election, the two (2) candidates receiving the highest number of votes cast for the office to be filled shall be the nominees for the respective offices, to be voted upon in a runoff election pursuant to § 7-5-106.

(B) In any case, except for the office of mayor, in which only one (1) candidate shall have filed and qualified for the office, the candidate shall be declared elected and the name of the person shall be certified as elected without the necessity of putting the person’s name on the general election ballot for the office.

(2) If the office of mayor is unopposed, then the candidate for mayor shall be printed on the general election ballot and the votes for mayor shall be tabulated as in all contested races.

(3) Any municipal judge position that is elected other than citywide will not be affected by this section.

(d) Special elections for mayors in cities of the first class and other special elections of officials required by law in cities and towns shall use the procedure in this section.

(e)(1) The governing body of any first class city, second class city, or incorporated town may enact an ordinance requiring independent candidates for municipal office to file petitions for nomination as independent candidates with the county clerk no later than noon on the day before the preferential primary election.

(2) The ordinance shall be enacted no later than ninety (90) days prior to the filing deadline. The ordinance shall be published at least once a week for two (2) consecutive weeks immediately following adoption of the ordinance in a newspaper having a general circulation in the city.

(f) Nothing in this section shall repeal any law pertaining to the city administrator form of government or the city manager form of government.

History. Acts 1991, No. 59, §§ 2, 3; 1991, No. 430, §§ 2, 3; 1995, No. 82, § 1; 1995, No. 665, § 1; 1997, No. 645, § 3.

Publisher’s Notes. Former § 14-42-206 was held unconstitutional in *Jeffers v. Clinton*, 740 F. Supp. 585 (E.D. Ark. 1990).

Former § 14-42-206, concerning nominating petitions for municipal primary elections, was repealed by Acts 1991, Nos. 59 and 430, § 1. The former section was derived from Acts 1989, No. 905, §§ 1-5, 8.

Amendments. The 1995 amendment

by No. 82 made minor stylistic changes in the petition forms in (b)(1).

The 1995 amendment by No. 665 added the subdivision designations in (b)(1); inserted "by twelve o'clock noon" in the introductory paragraph in (b)(1) and in (b)(2); and made minor stylistic changes in the petition forms in (b)(1).

The 1997 amendment, in (b)(1) substituted "clerk" for "board of election commissioners" and "the" for "their"; rewrote the petition form; added present (b)(2); redesignated (b)(2) as (b)(3); rewrote (e); redesignated (e)(2) as present (f).

CASE NOTES

Constitutionality.

This section represents a systematic and deliberate attempt to reduce black political opportunity, and is plainly uncon-

stitutional. *Jeffers v. Clinton*, 740 F. Supp. 585 (E.D. Ark. 1990), appeal dismissed, 498 U.S. 1129, 111 S. Ct. 1096, 112 L. Ed. 2d 1200 (1991) (decision under prior law).

SUBCHAPTER 3 — CHARTERS FOR CITIES OF THE FIRST AND SECOND CLASS

SECTION.

- 14-42-301. Construction.
- 14-42-302. Appointment of commission.
- 14-42-303. Election on proposed charter.
- 14-42-304. Amendments to charter.
- 14-42-305. Effect of approval.
- 14-42-306. Limitations on charters.

SECTION.

- 14-42-307. Powers of municipalities.
- 14-42-308. Annual budget, taxes, and rates.
- 14-42-309. Election results.
- 14-42-310. Election expenses.
- 14-42-311. Expiration of charter.

Effective Dates. Acts 1953, No. 207, § 11; Mar. 4, 1953.

14-42-301. Construction.

Nothing in this subchapter shall be construed to limit the powers of municipalities which shall continue to operate under the general laws of the State of Arkansas.

History. Acts 1953, No. 207, § 9; A.S.A. 1947, § 19-1059.

14-42-302. Appointment of commission.

(a)(1) The governing body of any city of the first or second class, upon passage of a municipal ordinance, may create a commission to frame a charter for the city.

(2) The commission shall be appointed by the governing body and shall be composed of not less than nine (9) members, who shall serve without compensation, and at least two-thirds ($\frac{2}{3}$) of whom shall not hold any other municipal office or appointment.

(b) The governing body of the municipality, if so requested by the commission, shall appropriate money to provide the reasonable expenses of the commission and for publication of the completed charter, and any separate or alternative provisions thereof.

History. Acts 1953, No. 207, § 1; 1961, No. 431, § 1, A.S.A. 1947, § 19-1051.

RESEARCH REFERENCES

Ark. L. Rev. Home Rule for Arkansas of Arkansas Municipal Law, 15 UALR L.J. Cities, 24 Ark. L. Rev. 235. 175.
UALR L.J. Goldner, A Call for Reform

14-42-303. Election on proposed charter.

(a)(1) Any charter framed as provided in § 14-42-302 shall be submitted to the qualified electors of the municipality at any election to be held at a time determined by the charter commission, but it shall be held within one (1) year after the appointment of the commission.

(2) Any part of the charter, or any alternative provision thereof, may be submitted to be voted upon separately.

(b) The commission shall publish, not less than thirty (30) days before any election, the proposed charter and any separate parts and alternative provisions thereof.

(c) Within thirty (30) days after its approval, the county board of election commissioners shall certify a copy of the charter to the Secretary of State.

History. Acts 1953, No. 207, § 2; A.S.A. 1947, § 19-1052.

14-42-304. Amendments to charter.

(a) Amendments to any charter may be proposed by a two-thirds ($\frac{2}{3}$) vote of the governing body of the municipality or by petition of ten percent (10%) of the qualified electors of the municipality.

(b) The amendment shall be submitted to the qualified electors of the municipality at a regular or special election.

(c) The proposed amendment shall be published at least one (1) time in some newspaper of general circulation throughout the municipality.

(d) Any amendment approved by a majority of the electors voting thereon shall become a part of the charter at the time fixed in the amendment and shall be certified to the Secretary of State.

(e) Each amendment submitted shall be confined to one (1) subject, and when more than one (1) amendment shall be submitted at the same time, they shall be so submitted as to enable the voters to vote on each amendment separately.

History. Acts 1953, No. 207, § 4; A.S.A. 1947, § 19-1054.

14-42-305. Effect of approval.

Any proposed charter which is approved by a majority of the electors voting thereon, and with the additions of any such parts and as modified by any such alternative provisions as may be separately submitted and approved by those voting on any such parts and provisions, shall become the organic law of the municipality at the time fixed in the charter and shall supersede all laws affecting the organization and government of the municipality which are in conflict therewith.

History. Acts 1953, No. 207, § 2;
A.S.A. 1947, § 19-1052.

14-42-306. Limitations on charters.

(a) No charter adopted pursuant to this subchapter shall be in conflict with it, nor shall it alter any civil service or pension laws in existence under the general laws of this state, any seventy-two-hour laws, vacation laws, two-platoon law for fire fighters, or the Arkansas Constitution.

(b) No charter shall alter or change any statutory laws providing for the powers, duties, and manner of appointment of any airport, water, sewer, or housing authority commissions within the city.

History. Acts 1953, No. 207, § 2;
A.S.A. 1947, § 19-1052.

14-42-307. Powers of municipalities.

(a)(1) Each municipality operating under a charter shall have the authority to exercise all powers relating to municipal affairs.

(2) This grant of authority shall not be deemed to limit or restrict the powers of the General Assembly in matters of state affairs, nor shall this subchapter be construed as increasing or diminishing the powers of the state to regulate utilities not municipally owned or fix the rates thereof.

(b) The following shall be deemed to be a part of the powers conferred upon the municipalities by this subchapter:

(1) To levy, assess, and collect taxes within the limits prescribed in the charter adopted by the municipality and the limits prescribed in the Arkansas Constitution;

(2) To furnish all local public services; to acquire property therefor by condemnation or otherwise, within or without the corporate limits, subject, however, to the provisions of the general laws of the State of Arkansas, including any law requiring that the acquisition of a utility plant be approved by a municipal election. However, no property can be acquired under this subchapter by the issuance of bonds, notes, or other evidence of indebtedness unless the bonds, notes, or evidence of indebtedness is secured by the credit of the city and all the property therein;

(3) To exercise all powers conferred by the state constitution and the General Assembly generally upon municipalities not contrary to this subchapter.

(c) No municipality shall pass any laws contrary to the criminal laws of the State of Arkansas.

History. Acts 1953, No. 207, §§ 6, 8;
A.S.A. 1947, §§ 19-1056, 19-1058.

14-42-308. Annual budget, taxes, and rates.

(a) The governing body of each municipality operating under a charter shall prepare, approve, and publish, not less than sixty (60) days in advance of the annual municipal general election, a proposed budget of operational expenditures of the municipality for the forthcoming year, together with proposed taxes and rate or rates sufficient to provide the funds therefor, excluding the rates under any continuing levies previously authorized.

(b)(1) The taxes and the rate or rates so proposed shall be submitted to the qualified electors at the next annual municipal general election.

(2)(A) The proposed taxes shall be approved or disapproved in their entirety.

(B)(i) If a majority of the qualified electors voting thereon shall approve the taxes so proposed, then the taxes so approved shall be collected at the rate provided.

(ii) In the event a majority of the qualified electors voting in the election shall disapprove the proposed taxes, then the taxes shall be collected at the last rate legally levied.

History. Acts 1953, No. 207, § 5; A.S.A. 1947, § 19-1055.

Cross References. Taxation, generally, § 26-73-101 et seq.

14-42-309. Election results.

(a) In all elections provided for in this subchapter, the results of the vote shall be certified immediately after the election by the county board of election commissioners to the mayor.

(b) The certified results shall become final and conclusive if they are not attacked in the courts within a period of thirty (30) days thereafter.

History. Acts 1953, No. 207, § 7;
A.S.A. 1947, § 19-1057.

14-42-310. Election expenses.

The expenses of the elections provided by this subchapter shall be borne by the municipality concerned.

History. Acts 1953, No. 207, § 3;
A.S.A. 1947, § 19-1053.

14-42-311. Expiration of charter.

By amendment to the charter, a date may be fixed for the expiration of the charter. On the date specified, the municipality shall cease to operate under this subchapter.

History. Acts 1953, No. 207, § 4;
A.S.A. 1947, § 19-1054.

SUBCHAPTER 4 — DEPARTMENTS OF PUBLIC SAFETY

SECTION.

- 14-42-401. Authority to create generally.
- 14-42-402. Functions of department.
- 14-42-403. Director of department.
- 14-42-404. Functions of employees.
- 14-42-405. Work hours and benefits.
- 14-42-406. Death or disability benefits.
- 14-42-407. Pension programs.
- 14-42-408. Grants and other benefits.
- 14-42-409. Applicable regulations and laws.
- 14-42-410. Creation in certain other cities.
- 14-42-411. Employees subject to civil service system.
- 14-42-412. Participation in pension and relief funds.
- 14-42-413. Transfer of fire fighter to public safety division.

SECTION.

- 14-42-414 — 14-42-420. [Reserved.]
- 14-42-421. Cities of the second class and towns — Creation — Functions.
- 14-42-422. Cities of the second class and towns — Director — Transfer of existing departments.
- 14-42-423. Cities of the second class and towns — Employees.
- 14-42-424. Cities of the second class and towns — Employee benefits and pension programs.
- 14-42-425. Cities of the second class and towns — Grants — Applicable regulations and laws.

Cross References. Civil service for police and fire departments, § 14-51-101 et seq.

Fire departments, § 14-53-101 et seq.
Firemen's relief and pension funds, § 24-11-801 et seq.
Police departments, § 14-52-101 et seq.
Police pension and relief funds, § 24-11-301 et seq.

Effective Dates. Acts 1985, No. 481, § 12: Mar. 21, 1985. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that the creation of a department of public safety in certain cities is urgently needed to provide for the orderly, efficient and economical administration of fire, police and other services. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health

and safety shall take effect and be in force from the date of its approval."

Acts 1989, No. 262, § 5: Mar. 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the executive officers of municipal police departments and fire departments should be appointed pursuant to the police and firefighters civil service law; that this Act so provides; that until this Act goes into effect the executive officers of the police departments and fire departments will be treated differently than other members of those departments, and that this inequity should be cured immediately. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-42-401. Authority to create generally.

The governing body of any city of the first or second class which is incorporated after December 31, 1984, may, by ordinance, create a department of public safety.

History. Acts 1985, No. 481, § 1;
A.S.A. 1947, § 19-947.

14-42-402. Functions of department.

A department of public safety shall perform the functions of, and have all the rights, responsibilities, and duties of, a police department, a fire department, and any other department deemed by the governing body of the city to be necessary for the public safety of its citizens including, but not limited to, emergency medical services.

History. Acts 1985, No. 481, § 2;
A.S.A. 1947, § 19-948.

14-42-403. Director of department.

The governing body of a city may, by resolution, appoint, remove, and appoint successors to the position of director of the department of public safety, who shall be the chief executive officer of the department. However, in a city with a city manager form of government, the governing body may, by ordinance, empower either the city manager or the civil service commission to appoint, remove, and appoint successors to the position of director of the department of public safety.

History. Acts 1985, No. 481, § 3;
A.S.A. 1947, § 19-949; Acts 1989, No. 839,
§ 1.

14-42-404. Functions of employees.

Employees of the department of public safety may perform the functions of police officers, fire fighters, or other services the department may be empowered to undertake if the employee is qualified under standards adopted by the governing body of the city to perform these functions.

History. Acts 1985, No. 481, § 4;
A.S.A. 1947, § 19-950.

14-42-405. Work hours and benefits.

For the purposes of regulating work hours, vacation days, sick leave, and other employee benefits, a department of public safety shall be deemed to be a fire department.

History. Acts 1985, No. 481, § 5;
A.S.A. 1947, § 19-951.

14-42-406. Death or disability benefits.

Employees of a department of public safety shall be eligible for all county, state, or federal death or disability benefits provided for police officers or fire fighters.

History. Acts 1985, No. 481, § 6;
A.S.A. 1947, § 19-952.

14-42-407. Pension programs.

A department of public safety may participate in available pension programs in either the police or fire category, or both. However, no employee of the department shall accrue benefits in both categories at the same time.

History. Acts 1985, No. 481, § 7;
A.S.A. 1947, § 19-953.

14-42-408. Grants and other benefits.

A department of public safety shall be entitled to all available county, state, and federal grants, turn-back moneys, loans, discounts, or other benefits of a similar nature available to other police or fire departments.

History. Acts 1985, No. 481, § 8;
A.S.A. 1947, § 19-954.

14-42-409. Applicable regulations and laws.

All applicable regulations and statutes regulating the conduct of police or fire departments or their functions shall apply to a department of public safety and its employees.

History. Acts 1985, No. 481, § 9;
A.S.A. 1947, § 19-955.

14-42-410. Creation in certain other cities.

(a)(1) The governing body of any city having a population, according to the 1970 Federal Decennial Census, of at least twenty-one thousand (21,000) but less than twenty-four thousand (24,000) may, by ordinance, create a department of public safety.

(2) The department of public safety shall consist of a fire division and a public safety division.

(b) Upon the creation of the department:

(1) The existing police department shall be abolished and transferred to the public safety division; and

(2) The existing fire department shall be abolished and transferred to the fire division.

(c)(1) The officers of the public safety division shall have the duties and authority of law enforcement officers and shall also perform fire

fighting duties as directed by the executive officer of the public safety division.

(2) Fire division personnel shall perform only fire fighting duties and emergency medical service duties.

(d)(1) The civil service commission shall appoint the director of the department of public safety, who shall be the chief executive officer of the department.

(2) The executive officer of the public safety division and the executive officer of the fire division of municipalities subject to the civil service system law in § 14-51-301 et seq. shall hereafter be appointed as prescribed by § 14-51-301 et seq.

History. Acts 1979, No. 659, § 1;
A.S.A. 1947, § 19-1060; Acts 1989, No.
262, §§ 1, 2.

14-42-411. Employees subject to civil service system.

(a) All employees of the department of public safety who were subject to the civil service system at the time of their employment by the department shall remain subject to the system.

(b) Nothing in this section and §§ 14-42-410, 14-42-412, and 14-42-413 shall be so construed as to reduce any right which any member of the existing fire department or police department may have under any civil service or retirement system.

History. Acts 1979, No. 659, § 2;
A.S.A. 1947, § 19-1061.

14-42-412. Participation in pension and relief funds.

(a) Except as provided in § 14-42-413, the director of the department of public safety and members of the public safety division, to be known as public safety officers, shall participate in the policemen's pension and relief fund.

(b) Personnel of the fire division shall participate in the firemen's relief and pension fund.

History. Acts 1979, No. 659, § 3;
A.S.A. 1947, § 19-1062.

14-42-413. Transfer of fire fighter to public safety division.

(a)(1) Any fire fighter may transfer to the public safety division and, if he chooses, participate in the policemen's pension and relief fund.

(2) As a condition precedent to this participation, the fire fighter shall withdraw from the firemen's relief and pension fund the amount of his contributions and deposit them in the policemen's pension and relief fund, and thereupon receive years of service credit in the policemen's fund for the years served as a fire fighter, if the years served

as a fire fighter were served in the city covered by this section and §§ 14-42-410 — 14-42-412.

(b) Upon this written application for retirement, the board of trustees of the policemen's fund shall place him on the pension roll at one-half ($\frac{1}{2}$) actual compensation based upon his highest compensation during his time of service as a public safety officer, after having completed not less than twenty (20) years combined service as a public safety officer and fire fighter.

(c) In computing total years of service for retirement, the board of trustees of the policemen's fund shall give credit for the time which the public safety officer shall have devoted to full-time duty as a public safety officer and also as a fire fighter. However, no public safety officer shall be eligible to receive years of service credit served as a fire fighter until he has completed a minimum of fifteen (15) years' service as a public safety officer.

History. Acts 1979, No. 659, § 4;
A.S.A. 1947, § 19-1063.

14-42-414 — 14-42-420. [Reserved.]

14-42-421. Cities of the second class and towns — Creation — Functions.

(a) The governing body of any city of the second class or incorporated town, may, by ordinance, create a department of public safety.

(b) A city or town department of public safety shall perform the functions of, and have all the rights, responsibilities, and duties of, a police department or the city or town marshal's office and a municipal fire department. Further, it may perform any other departmental functions deemed by the governing body of the city or town to be necessary for the public safety of its citizens including, but not limited to, emergency medical services, ambulance services, or building and health code enforcement.

History. Acts 1997, No. 728, § 1.

A.C.R.C. Notes. The punctuation in this section is incorrect or does not con-

form to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

14-42-422. Cities of the second class and towns — Director — Transfer of existing departments.

(a) Once the department is formed, the mayors in cities of the second class and incorporated towns shall have the power to appoint and remove the director of the department of public safety, unless the city or town council shall, by a two-thirds ($\frac{2}{3}$) majority of the total membership of the council, vote to override the mayor's action.

(b) Upon the creation of the department, the existing police department or the city or town marshal's office and the existing fire depart-

ment shall be abolished and transferred to the department of public safety.

History. Acts 1997, No. 728, § 2.

14-42-423. Cities of the second class and towns — Employees.

Employees of the department of public safety may perform the functions of police officers, fire fighters, or other services the department may be empowered to undertake if the particular employee is qualified under standards adopted by the governing body of the city to perform these functions and is in compliance with and qualified or certified by the applicable state laws.

History. Acts 1997, No. 728, § 3.

14-42-424. Cities of the second class and towns — Employee benefits and pension programs.

(a) For the purposes of regulating work hours, vacation days, sick leave, and other employee benefits, a department of public safety shall be deemed to be a fire department.

(b) A department of public safety may participate in available pension programs in either the police or fire category, or both, and conditioned on their creation and availability within the particular city or town. However, no employee of the department shall accrue benefits in both categories at the same time.

(c) Volunteers for fire services provided by the department of public safety may accrue benefits as volunteer fire fighters.

(d) Employees of a department of public safety shall be eligible for all county, state, or federal death or disability benefits provided for police officers or fire fighters.

History. Acts 1997, No. 728, § 4.

14-42-425. Cities of the second class and towns — Grants — Applicable regulations and laws.

(a) A department of public safety shall be entitled to all available county, state, and federal grants, turnback money, insurance premium tax funds, loans, discounts, or other benefits of a similar nature available to police or fire departments for training or equipment.

(b) All applicable regulations and statutes regulating the certification of law enforcement officers, the certification of fire departments, the conduct of police or fire departments or their functions shall apply to a department of public safety and its employees.

History. Acts 1997, No. 728, § 5.

CHAPTER 43

GOVERNMENT OF CITIES OF THE FIRST CLASS

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
 2. ELECTIONS GENERALLY.
 3. ELECTION OF CITY OFFICIALS.
 4. OFFICERS AND EMPLOYEES GENERALLY.
 5. POWERS AND DUTIES GENERALLY.
 6. POWERS OVER MUNICIPAL AFFAIRS.
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Cross References. Mayors of cities of first class — Retirement benefits, § 24-12-123.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — ELECTIONS GENERALLY

SECTION.

- 14-43-201. Odd-year elections abolished.
14-43-202. Write-in votes not counted.
-

Effective Dates. Acts 1935, No. 105, § 3: Mar. 12, 1935. Emergency clause provided: "In order that this may apply to the forthcoming municipal elections such fact is hereby declared to constitute an emer-

gency and this act being necessary for the immediate preservation of the public peace, health and safety shall take effect upon its approval by the governor as an emergency measure."

14-43-201. Odd-year elections abolished.

(a) Municipal elections in 1965 and all odd years in the future are abolished.

(b) It is the purpose of this section to elect municipal officials at the regular general election for the election of state and county officials.

History. Acts 1965, No. 484, § 5; A.S.A. 1947, § 19-1002.8.

Publisher's Notes. The former second sentence of this section provided that the term of any municipal judge or other offi-

cial that would expire in an odd-numbered year would be extended one year until the next regular general election in an even-numbered year.

14-43-202. Write-in votes not counted.

In all general elections held in cities of the first class and second class and incorporated towns for the election of officials of these municipalities, no ballots shall be counted for any person whose name is written in thereon. Only votes cast for the regularly nominated, or otherwise qualified, candidates whose names are printed on the ballot as candidates in the election shall be counted by the judges and clerks.

History. Acts 1935, No. 105, § 1; Pope’s Dig., § 9575; A.S.A. 1947, § 19-1001; Acts 1995, No. 179, § 1.

Amendments. The 1995 amendment

inserted “and second class and incorporated towns”, and substituted “municipalities” for “cities.”

CASE NOTES

ANALYSIS

Constitutionality.
In general.
Applicability.

Constitutionality.

Prohibiting voting for write-in candidates at city elections is constitutional. Davidson v. Rhea, 221 Ark. 885, 256 S.W.2d 744 (1953).

In General.

This section was not changed by 1949 enactment providing a line “for possible

write-in votes” in all elections except in primary elections, since latter provision only recognized right that, at some time in the future, the General Assembly might provide for write-in votes in general elections. Davidson v. Rhea, 221 Ark. 885, 256 S.W.2d 744 (1953).

Applicability.

This section does not apply to city election where there are no “write-in” candidates. Clark v. Porter, 223 Ark. 682, 268 S.W.2d 383 (1954).

SUBCHAPTER 3 — ELECTION OF CITY OFFICIALS

SECTION.

- 14-43-301. Type of election.
- 14-43-302. [Repealed.]
- 14-43-303. Officials in mayor-council cities of 50,000 or more.
- 14-43-304. Mayors in cities having mayor-council government.
- 14-43-305. Mayors in mayor-council cities of less than 50,000.
- 14-43-306. [Repealed.]
- 14-43-307. Election of aldermen at large or by ward.
- 14-43-308. Residence qualifications of aldermen in primaries.
- 14-43-309. Residence qualifications of aldermen in general elections.
- 14-43-310. Alderman ceasing to reside in ward.

SECTION.

- 14-43-311. Redistricting of wards.
- 14-43-312. Aldermen in mayor-council cities of less than 50,000.
- 14-43-313. City clerks and attorneys generally.
- 14-43-314. City attorney in mayor-council cities of 50,000 or more.
- 14-43-315. City attorney in mayor-council cities of less than 50,000.
- 14-43-316. City clerk in mayor-council cities of less than 50,000.
- 14-43-317. [Repealed.]
- 14-43-318. Police judge in cities of the first class.

Cross References. Elections generally, § 14-42-201 et seq.

Preambles. Acts 1961, No. 430 contained a preamble which read: "Whereas, the office of City Clerk is the hub of city activities and requires a person of professional nature, and

"Whereas, said office of City Clerk in the cities of the first class performs a multitude of services for the city government and community, and

"Whereas, said office of City Clerk and the persons holding said office in the various cities of the first class have shown an outstanding record of efficiency, and

"Whereas, the time necessary for a person having been first elected to said office of City Clerk to fully acquaint themselves with said various duties to be performed is equal to or greater than the two (2) year term for which said person is now elected, and

"Whereas, said office of City Clerk in the various cities of the first class in the State of Arkansas has shown a tendency for reelection of the persons holding said office for many years, and

"Whereas, a four (4) year term of office is desirable and necessary for the continued efficiency in the office of City Clerk in the cities of the first class,

"Now, Therefore...."

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

Acts 1885, No. 67, § 7: effective on passage.

Acts 1893, No. 151, § 2: effective on passage.

Acts 1905, No. 275, § 2: became law without Governor's signature, May 6, 1905.

Acts 1943, No. 248, § 2: effective on passage.

Acts 1949, No. 112, § 4: approved Feb. 18, 1949. Emergency clause provided: "Whereas, there is a great need for clarifying the laws of this state concerning the nomination and election of aldermen in cities of the first class; and, whereas, much confusion is resulting from the lack of such legislation; and, whereas, the election of aldermen is of proper and grave concern to the wellbeing and proper administration of the municipalities of the State of Arkansas, and this act being necessary for the preservation of the public peace, health and safety of the inhabitants of the State of Arkansas; an emer-

gency is hereby declared to exist and this Act shall be in full force and effect from and after its passage."

Acts 1951, No. 123, § 2: effective on passage.

Acts 1951, No. 365, § 2: effective on passage.

Acts 1959, No. 176, § 4: Mar. 4, 1959. Emergency clause provided: "Whereas, there are many municipal problems peculiar to cities of over 50,000 population, and whereas, the legislature does determine that a 4-year term for municipal officials in cities having the mayor-council form of government and also have or may hereafter have more than 50,000 population according to the Federal Census, is necessary for the proper administration of municipal affairs, and whereas, this act is needed to save unnecessary expenditures of the taxpayers' money in holding odd-year municipal elections, and this act being necessary for the immediate protection of the public peace, health and safety, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage and approval."

Acts 1965, No. 12, § 3: Feb 1, 1965. Emergency clause provided: "It is hereby determined that matters vitally affecting the welfare of the State of Arkansas must be dealt with by the 65th General Assembly, and this Act being necessary for the preservation of the peace, health and safety of the people, an emergency is hereby declared to exist, and this Act shall take effect and be in full force from and after its passage and approval."

Acts 1965, No. 131, § 3: Mar. 1, 1965. Emergency clause provided: "It is hereby determined that matters vitally affecting the welfare of the State of Arkansas must be dealt with by the 65th General Assembly, and this Act being necessary for the preservation of the peace, health and safety of the people, an emergency is hereby declared to exist, and this Act shall take effect and be in full force from and after its passage and approval."

Acts 1969, No. 154, § 6: approved Mar. 3, 1969. Emergency clause provided: "Whereas, this Act is necessary to establish the appointment of city attorneys in cities within the provisions of this Act and to properly protect the public peace, health, and safety, an emergency is hereby declared to exist and this Act shall be in

full force and effect from and after its passage."

Acts 1973, No. 600, § 3: approved Apr. 4, 1973. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that some confusion exists concerning the election of aldermen and when incumbent aldermen continue in office when ward boundaries are reapportioned; that clarification is necessary to assure that incumbent aldermen who are not up for reelection will not have to run for office when such reapportionment permits such aldermen to remain in their old ward or part thereof; that filing deadlines for the primary elections will be held before ninety (90) days after the adjournment of this session and this Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in force and effect from and after its passage."

Acts 1975, No. 269, § 4: approved Feb. 25, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present General Election laws fail to clearly provide that mayors of first-class cities shall be elected by a majority vote of the electors voting on said mayors in the election; that the situation now exists that the choice of a minority of the voters can elect a mayor; that legislation is necessary to provide for a special runoff election to insure that such officials are a choice of the majority of the voters and to insure a representative government, and this Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and the Act shall be in force and effect from and after its passage."

Acts 1977, No. 171, § 5: Feb. 15, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that under present law, city attorneys in some of the larger cities are appointed by the mayor with the approval of the city council; that this procedure for selecting a city attorney in such cities is a practical one but that if an attorney so appointed elects not to serve in that position and resigns his or her position as city attorney in such city after January 1, 1977, the city attorney in that city should thereafter be elected by the qualified electors of the city; that the electors in such city should be given an opportunity to

elect a city attorney at the earliest possible date after resignation of an appointed city attorney; that this Act is designed to establish a procedure for the election of a city attorney in such cities and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 1002, § 3: Apr. 17, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly that there is an immediate need for establishing salary guidelines for City Attorneys of cities of the first class having a population of 50,000 or more and having a mayor-council form of government. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 421, § 3: Mar. 20, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to the effective and efficient administration of municipal government that cities be given greater discretion in determining the method of selection of members of the governing bodies of such municipalities and that this Act is designed to grant such discretion and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 857, § 5: Apr. 2, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that this act empowers cities in transition to the mayor-council form of government to provide that all aldermen be elected by ward; that some elections for aldermen are to be held in the near future; and that this act should become effective as soon as possible in order to conduct elections in accordance with this act. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., § 231 et seq. **C.J.S.** 62 C.J.S., Mun. Corp., § 468 et seq.

14-43-301. Type of election.

In cities of the first class, all officers to be elected shall be elected at the regular general election for municipal corporations.

History. Acts 1875, No. 1, § 62, p. 1, C. & M. Dig., § 7744; Pope's Dig., § 9940; A.S.A. 1947, § 19-1011; Acts 1995, No. 359, § 1.

Amendments. The 1995 amendment substituted "general election" for "annual election."

14-43-302. [Repealed.]

Publisher's Notes. This section, concerning election of city officers generally, was repealed by Acts 1997, No. 214, § 1. The section was derived from Acts 1875, No. 1, § 51, p. 1; C. & M. Dig., § 7690; Pope's Dig., § 9819; A.S.A. 1947, § 19-1002.

14-43-303. Officials in mayor-council cities of 50,000 or more.

(a)(1)(A) In the general election in the year 1960, and every four (4) years thereafter, cities of the first class which have a population of fifty thousand (50,000) persons or more, according to the latest decennial federal census or special federal census, and which also have the mayor-council form of government shall elect the following officials:

- (i) One (1) mayor;
- (ii) One (1) city clerk; and
- (iii) One (1) alderman from each ward of the city.

(B) All of these officials shall hold office for a term of four (4) years and until their successors are elected and qualified.

(2)(A) At the general election in the year 1960, the city shall also elect:

- (i) One (1) city attorney;
- (ii) One (1) city treasurer; and
- (iii) One (1) alderman from each ward of the city.

(B) All of these officials shall hold office for a term of two (2) years and until their successors are elected and qualified.

(3)(A) At the general election in the year 1962, and every four (4) years thereafter, the city shall elect:

- (i) One (1) city attorney;
- (ii) One (1) city treasurer;
- (iii) One (1) municipal judge; and
- (iv) One (1) alderman from each ward of the city.

(B) All of these officials shall hold office for a term of four (4) years and until their successors are elected and qualified.

(b) In all primaries or general elections, the candidates for the office of alderman shall reside in their respective wards. However, all qualified electors residing in these cities and entitled to vote in the elections shall have the right to vote at their several voting precincts for each and every candidate so to be nominated or elected.

(c) All odd-year elections for municipal officials in the cities of the first class which have a population of fifty thousand (50,000) or more persons, according to the latest federal census, and which also have the mayor-council form of government are abolished.

(d) If a city first attains a population of fifty thousand (50,000) as shown in a decennial federal census or special federal census completed after January 1, 1997, and the mayor or other elected official of such city last elected before the census was elected to a four-year term and such term will expire two (2) years before the quadrennial general election year at which city officials are elected as provided in subsection (a) of this section, the terms of such officials shall be extended for a period of two (2) years in order that the terms will coincide with the next quadrennial general election year. At that quadrennial general election and at each quadrennial general election thereafter, the mayor and such other municipal officials shall be elected to terms of four (4) years as provided in this section. The provisions of this subsection shall not affect in any way the provisions of this section which provide for staggering the terms of office of aldermen so that one (1) alderman will be elected from each ward every two (2) years.

History. Acts 1959, No. 176, §§ 1, 2; A.S.A. 1947, §§ 19-1002.2, 19-1002.3; Acts 1997, No. 707, §§ 2, 3.

A.C.R.C. Notes. Acts 1997, No. 707, § 1, provides: "It is found and determined by the General Assembly that there is some disagreement as to whether the term 'latest federal census' in Arkansas Code 14-43-303 means a federal decennial census or includes a special federal census and it is the purpose of this act to assure that a special federal census is included."

"It is further found and determined by the General Assembly that one or more cities in the State will first attain a population of 50,000 soon after January 1, 1997; that the mayor and some other officials of such city or cities were elected to terms of four (4) years at the 1994 general election and their terms will expire at the end of 1998; that under the current law relating to election of the mayor and some other city officials in cities having a population of 50,000 or more such officials are required to be elected to four-year terms at the quadrennial general election which means that there will be a two-year period between

the normal expiration of their current terms and the quadrennial general election at which the officers are required by current law to be elected for four-year terms; that this situation may occur repeatedly in the future as new cities attain a population of 50,000; that the primary options are to either extend the terms by two (2) years in order that the terms will expire at the appropriate time to be filled at the next quadrennial general election or to reduce the four-year terms immediately before the quadrennial election year to two (2) years; that it appears more equitable to extend the four-year terms to six-year terms than to cut terms short to accommodate the election schedule prescribed in Arkansas Code 14-43-303(a). It is therefore the intent and purpose of this act to provide for the extension of such terms of office to accommodate the election schedule currently provided by law for such offices."

Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to make the following corrections: (1) Subsection (d) needs to be subdivided; (2) The punctuation in subsection (d) does not

conform to Code style; and (3) The references to "decennial federal census" in subdivision (a)(1)(A) and subsection (d) should be "federal decennial census."

Publisher's Notes. The former last part of what is now subsection (c) of this section provided that any municipal official or judge whose term expired at a time

requiring election in an odd year would be elected at the next general election in an even year.

Amendments. The 1997 amendment substituted "according to the latest decennial federal census or special federal census" for "according to the latest federal census" in (a)(1)(A); and added (d).

CASE NOTES

Constitutionality.

Since the classification made by this section bears a reasonable relation to the purpose of the law, it does not constitute local legislation in violation of Ark. Const. Amend. 14. *Lovell v. Democratic Cent. Comm.*, 230 Ark. 811, 327 S.W.2d 387 (1959).

Although this section was expressed in general terms, it had exclusive applicability to two cities; therefore, a three-judge court was improperly convened in an action challenging the statute's constitutionality. *Dove v. Bumpers*, 497 F.2d 895 (8th Cir. 1974).

14-43-304. Mayors in cities having mayor-council government.

(a)(1) No mayor of cities of the first class having a mayor-council form of government shall be elected except by a majority vote of the qualified electors of the city.

(2) The provisions of this section shall not apply to a city of the first class with a city manager form of government or a city administrator.

(b)(1) As soon as the returns from all precincts are received, but in no event later than the seventh day after the election, the county board of election commissioners shall, from the certificates and ballots received from the several precincts, proceed to ascertain and declare the result of the election and deliver a certificate of his election to any person having the majority of legal votes for the office of mayor.

(2) The county board of election commissioners shall also file in the office of the clerk of the county court a certificate setting forth in detail the results of the election.

(c)(1) In the event that no candidate for mayor of cities of the first class receives a majority of the votes cast in the general election, the two (2) candidates receiving the highest number of votes shall be certified to a special runoff election, which shall be held two (2) weeks from the day on which the general election is held.

(2) The special runoff election shall be conducted in the same manner as provided by law, and the election results thereof shall be canvassed and certified in the manner provided by law.

(d) In the event that a vacancy occurs in the office of mayor of these cities, the vacancy shall be filled by a special election and special runoff election, if necessary, as provided in subsection (c) of this section.

History. Acts 1975, No. 269, §§ 1-3; A.S.A. 1947, §§ 19-1002.9 — 19-1002.11.

14-43-305. Mayors in mayor-council cities of less than 50,000.

(a) The qualified voters of cities of the first class having a population of less than fifty thousand (50,000) and having the mayor-council form of government, on the Tuesday following the first Monday in November of 1970 and every four (4) years thereafter, shall elect a mayor for four (4) years.

(b) Incumbent mayors shall continue in office until their successors are elected and qualified.

History. Acts 1965, No. 12, § 1; A.S.A. 1947, § 19-1002.4.

mayors to serve from January 1, 1967, to January 1, 1971.

Publisher's Notes. Formerly, this section provided, in part, for the election of

14-43-306. [Repealed.]

Publisher's Notes. This section, concerning mayors in cities between 28,000 and 35,000, was repealed by Acts 1993,

No. 1121, § 1. The section was derived from Acts 1953, No. 244, § 1; A.S.A. 1947, § 19-1002.1.

14-43-307. Election of aldermen at large or by ward.

(a)(1) Candidates for the office of alderman in cities of the first class shall reside in the ward from which they seek to be elected and shall run at large.

(2)(A) All of the qualified electors of these cities shall be entitled to vote in the election.

(B)(i) Provisions shall be made by the election commissioners in these cities so that the qualified electors of each ward shall have at least one (1) voting precinct in each ward where the resident electors thereof may cast their ballots.

(ii) Cities of the second class that elect their aldermen citywide may have one (1) public place only for holding elections.

(b)(1)(A) The city council of any such city or the governing body of any city in transition to the mayor-council form of government is empowered and authorized to provide, by ordinance, that all aldermen be elected by ward, in which event each alderman shall be voted upon by the qualified electors of the ward from which the person is a candidate.

(B)(i) When so provided by city ordinance, the name of the candidate shall appear upon the ballot only in the ward in which he is a candidate.

(ii) The city council of these cities may provide for the election of one (1) alderman from each ward citywide and the other aldermen from each ward by the voters of the ward only.

(2) All such cities choosing to elect all aldermen by wards or in part by wards shall provide, in the manner provided by law, for the establishment of wards of substantially equal population in order that each alderman elected from each ward shall represent substantially the same number of people in the city.

History. Acts 1965, No. 484, § 3; 1969, No. 45, § 1; 1973, No. 501, § 1; 1985, No. 421, § 1; A.S.A. 1947, § 19-1002.7; Acts 1993, No. 857, § 1.

A.C.R.C. Notes. The 1985 amendment to this section made the section applicable to cities of the second, as well as the first, class. The provisions of the 1985 act, as they apply to cities of the first class are codified in this section, while the provi-

sions as applicable to cities of the second class are codified as part of § 14-44-103.

Amendments. The 1993 amendment substituted "ballots" for "ballot" in (a)(2)(B)(i); and added "or the governing body of any city in transition to the mayor-council form of government" in (b)(1)(A).

Cross References. Special election of alderman in territory annexed by municipality, § 14-40-1207.

CASE NOTES

ANALYSIS

At large.
By wards.

At Large.

Evidence was held sufficient to establish that at-large electoral system in city was unconstitutionally maintained to intentionally deprive black voters of their rights. *Perkins v. City of West Helena*, 675 F.2d 201 (8th Cir.), *aff'd*, 459 U.S. 801, 103 S. Ct. 33, 74 L. Ed. 2d 47 (1982).

By Wards.

A claim that the existing voting wards of a city are not substantially equal in size

as required by this section must be resolved in a proceeding before a county circuit court under § 14-43-311, rather than a federal district court, despite the general rule against requiring exhaustion of state administrative or judicial remedies in § 1983 civil rights actions. *Perkins v. City of West Helena*, 514 F. Supp. 770 (E.D. Ark. 1981), *affirmed as modified*, 675 F.2d 201 (8th Cir.), *aff'd*, 459 U.S. 801, 103 S. Ct. 33, 74 L. Ed. 2d 47 (1982).

14-43-308. Residence qualifications of aldermen in primaries.

(a)(1) In all primaries held in any city of the first class by any organized political party, the candidates for nomination for the office of alderman shall reside in their respective wards.

(2) All qualified electors residing in these cities and entitled to vote in the primaries shall have the right to vote at their several voting precincts for each and every candidate so to be nominated.

(b)(1) The city council is authorized and empowered to provide, by ordinance, that the candidate shall only be voted upon by qualified voters of the ward who are entitled to vote in the primary from which the person is a candidate.

(2) When so provided by ordinance, any of the candidates in such case shall appear upon the ballot only in the ward in which he is a candidate.

History. Acts 1949, No. 112, § 1; A.S.A. 1947, § 19-1003.1.

CASE NOTES

Cited: *Leadership Roundtable v. City of Little Rock*, 499 F. Supp. 579 (E.D. Ark. 1980).

14-43-309. Residence qualifications of aldermen in general elections.

(a)(1) In all general elections for aldermen in cities of the first class, the aldermen so elected shall reside in their respective wards, as provided by law.

(2) All qualified electors residing in these cities shall have the right to vote at their several voting precincts for each and every alderman so to be elected.

(b)(1) The city council of any such city is empowered and authorized to provide, by ordinance, that the aldermen shall only be voted upon by qualified voters of the ward from which the person is a candidate.

(2) When so provided by ordinance, the name of the candidate shall appear upon the ballot only in the ward in which he is a candidate.

History. Acts 1949, No. 112, § 2;
A.S.A. 1947, § 19-1003.2.

14-43-310. Alderman ceasing to reside in ward.

If any duly elected alderman shall cease to reside in the ward from which he was elected, that person shall be disqualified to hold the office and a vacancy shall exist which shall be filled as prescribed by law.

History. Acts 1875, No. 1, § 51, p. 1; C. Acts 1961, No. 444, § 1; A.S.A. 1947, & M. Dig., § 7692; Pope's Dig., § 9835; § 19-1004.

CASE NOTES

Cited: Lovell v. Democratic Cent. F.2d 201 (8th Cir.), aff'd, 459 U.S. 801, 103 Comm., 230 Ark. 811, 327 S.W.2d 387 S. Ct. 33, 74 L. Ed. 2d 47 (1982). (1959); Perkins v. City of West Helena, 675

14-43-311. Redistricting of wards.

(a)(1)(A) City councils in cities of the first class shall have the authority to redistrict the wards in their city when they determine that the people can best be served by adding wards, combining wards, or changing ward boundary lines to equalize the population in the various wards.

(B) It shall be the duty of the council to see that each ward has as nearly an equal population as would best serve the interest of the people of the city.

(2)(A) Within ninety (90) days after redistricting, if one hundred (100) or more qualified electors in the city are dissatisfied with the redistricting of the city into wards, they shall have the authority to petition the circuit court.

(B) The court, after due hearing, shall have authority to redistrict the city into such wards as the court shall deem best if the court finds that the redistricting action by the council was arbitrary and capricious.

(b) At the next city election held, more than twenty (20) days after the approval of redistricted wards, there shall be elected from each of the new wards two (2) aldermen who shall organize the new city council at the first council meeting in January after their election.

(c)(1)(A) All aldermen elected in the city prior to redistricting of wards shall give up their positions to the new aldermen at the time for the organization of the new council, as provided in subsection (b) of this section.

(B) From that date the terms of office of all previously elected aldermen shall cease and terminate.

(2)(A) It shall be lawful to increase the number of wards or continue the same number of wards without affecting the terms of office of incumbent aldermen of the city.

(B)(i) When the wards are reapportioned so as to increase the number of wards or readjust existing wards so that such wards contain nearly equal population, the aldermen who remain in their old ward, or part thereof, shall continue in office.

(ii) New aldermen shall be elected only for new wards actually formed out of the territory of old wards.

(d)(1) All clerk's costs and other costs incurred in the proceedings authorized in this section shall be paid by the persons at whose instance the services were rendered.

(2)(A) In case these proceedings result in the redistricting of the city into new wards, the compensation of those individuals making the redistricting shall be fixed by the circuit judge, certified to the city council, and paid out of the city treasury.

(B) This compensation shall not exceed the sum of twenty-five dollars (\$25.00) each.

History. Acts 1885, No. 67, § 6, p. 92; 1905, No. 275, § 1, p. 693; C. & M. Dig., §§ 7720-7724, 7726; Pope's Dig., §§ 9890-

9894, 9896; Acts 1973, No. 600, § 1; 1983, No. 253, § 1; A.S.A. 1947, §§ 19-1005 — 19-1007, 19-1009.

CASE NOTES

Jurisdiction.

A claim that the existing voting wards of a city are not substantially equal in size as required by § 14-43-307 must be resolved in a proceeding before a county circuit court under this section rather than a federal district court despite the general rule against requiring exhaustion of state administrative or judicial remedies in § 1983 civil rights actions. *Perkins v. City of West Helena*, 514 F. Supp. 770 (E.D. Ark. 1981), *aff'd* as modified, 675 F.2d 201 (8th Cir.), *aff'd*, 459 U.S. 801, 103 S. Ct. 33, 74 L. Ed. 2d 47 (1982).

A claimant in federal district court who challenged the manner of election of at-

large city council members was denied federal relief and was referred to county circuit court under this section on the basis of comity, since the speed with which action can be taken under this section exceeds that of the federal court, the proceedings are likely to be informal and better suited to a resolution of the problem, and there will be no lengthy appellate proceedings because this section allows for no appeal. *Perkins v. City of West Helena*, 514 F. Supp. 770 (E.D. Ark. 1981), *aff'd* as modified, 675 F.2d 201 (8th Cir.), *aff'd*, 459 U.S. 801, 103 S. Ct. 33, 74 L. Ed. 2d 47 (1982).

Cited: *Perkins v. City of West Helena*,

675 F.2d 201 (8th Cir. 1982); *Moorman v. Priest*, 310 Ark. 525, 837 S.W.2d 886 (1992).

14-43-312. Aldermen in mayor-council cities of less than 50,000.

(a) On the Tuesday following the first Monday in November 1966, and every two (2) years thereafter, the qualified voters of all cities of the first class with less than fifty thousand (50,000) inhabitants having the mayor-council form of government shall elect two (2) aldermen from each ward for a term of two (2) years.

(b)(1) The election officials shall designate the aldermen as alderman number 1 and alderman number 2.

(2)(A) Candidates for the office of alderman shall designate the number of the alderman's office which they are seeking at the time they file as a candidate for the office.

(B) When this designation has been made, the candidate shall not be permitted thereafter to change the designation.

History. Acts 1965, No. 484, §§ 1, 2; A.S.A. 1947, §§ 19-1002.5, 19-1002.6.

CASE NOTES

At-Large Elections.

Evidence was held sufficient to establish that at-large electoral system in the city was unconstitutionally maintained to

intentionally deprive black voters of their rights. *Perkins v. City of West Helena*, 675 F.2d 201 (8th Cir.), *aff'd*, 459 U.S. 801, 103 S. Ct. 33, 74 L. Ed. 2d 47 (1982).

14-43-313. City clerks and attorneys generally.

(a) At the general election in cities of the first class held in 1894 and every two (2) years thereafter, there shall be elected by the qualified electors of these cities a city clerk and city attorney who shall hold office for the two (2) years next following and until their successors are elected and qualified.

(b) The clerk and attorney shall give the bond, perform the duties, and receive such salary as is prescribed by ordinance in each of these cities.

History. Acts 1893, No. 151, § 1; C. & M. Dig., § 7690; Pope's Dig., § 9819; A.S.A. 1947, § 19-1015.

Cross References. Self-Insured Fidelity Bond Program, § 21-2-701 et seq.

CASE NOTES

ANALYSIS

Duties of city attorneys.
Salary of city attorneys.

Duties of City Attorneys.

There is a duty on the part of a city attorney to enforce the city ordinances in the police court, and the failure and re-

fusal to do it is nonfeasance in office. *Rowland v. State*, 213 Ark. 780, 213 S.W.2d 370 (1948); *cert. denied*, 336 U.S. 918, 69 S. Ct. 641, 93 L. Ed. 1081 (1949).

Inasmuch as this section does not prescribe the duties of a city attorney in detail, but leaves it to city council to fix such duties, a court cannot take judicial

notice of duties of a city attorney as fixed by municipal ordinance. *Campbell v. City of Hot Springs*, 232 Ark. 878, 341 S.W.2d 225 (1960).

Authority of city attorney to represent city in circuit court on appeal from proceeding for dismissal of police officer will be presumed in absence of showing that attorney lacked authority to prosecute such an appeal. *Campbell v. City of Hot Springs*, 232 Ark. 878, 341 S.W.2d 225 (1960).

Salary of City Attorneys.

Prosecuting attorney could not appear and prosecute in the name of a city under a municipal ordinance and receive a fee therefor. *Miller v. City of Ft. Smith*, 160 Ark. 487, 254 S.W. 1068 (1923) (decision prior to § 14-43-410).

Cited: *Lovell v. Democratic Cent. Comm.*, 230 Ark. 811, 327 S.W.2d 387 (1959).

14-43-314. City attorney in mayor-council cities of 50,000 or more.

(a)(1) The city attorney in any city of this state having a mayor-council form of government and having a population of fifty thousand (50,000) or more inhabitants shall be elected by the qualified electors of the city in the same manner as other municipal officials are elected.

(2) At the November 1978 general election and each four (4) years thereafter, the qualified electors of each city under this section shall elect a city attorney to take office on the next following January 1, to serve for a term of four (4) years.

(b)(1) Any person elected as city attorney under the provisions of this section shall perform such duties, possess such qualifications, employ such staff, and be paid such salary and expenses as may be established, by ordinance, by the city council of the city.

(2) [Repealed].

History. Acts 1969, No. 154, §§ 1, 3; 1977, No. 171, §§ 1, 4; 1979, No. 1002, § 1; A.S.A. 1947, §§ 19-1015.3, 19-1015.5, 19-1015.7; Acts 1993, No. 1121, § 1.

Publisher's Notes. Formerly, subdivision (a)(1) of this section provided, in part, for the appointment of city attorneys until the general election of 1978. Other provisions of Acts 1969, No. 154, which enacted this statute, provided for the intent and purpose of this legislation (§ 4) and provided that any person so appointed would be deemed to be an employee of the city and not an official (§ 2).

Amendments. The 1993 amendment repealed (b)(2).

14-43-315. City attorney in mayor-council cities of less than 50,000.

(a) The qualified voters of cities of the first class having a population of less than fifty thousand (50,000) and having the mayor-council form of government shall, on the Tuesday following the first Monday in November, 1970, and every four (4) years thereafter, elect a city attorney for four (4) years.

(b) Incumbent city attorneys shall continue in office until their successors are elected and qualified.

History. Acts 1965, No. 131, § 1; A.S.A. 1947, § 19-1015.1.

Publisher's Notes. Formerly, this section provided, in part, for the election of city attorneys to serve from January 1, 1967, to January 1, 1971.

tion provided, in part, for the election of city attorneys to serve from January 1, 1967, to January 1, 1971.

14-43-316. City clerk in mayor-council cities of less than 50,000.

(a) The qualified voters of cities of the first class having a population of less than fifty thousand (50,000) and having the mayor-council form of government shall elect one (1) city clerk on the first Tuesday following the first Monday in November, 1962, and every four (4) years thereafter. The city clerk shall hold office for four (4) years and until his successor is elected and qualified.

(b) The clerk shall take his oath of office with the other city officials that are elected in the general election in 1962 and in that manner every four (4) years thereafter.

(c) The clerk shall give the bond and perform the duties as are prescribed by law and shall receive such salary as prescribed by ordinance in each of these cities.

(d) The incumbent in any city having this population shall continue to be the clerk and receive such salary and perform such duties until his successor is elected and qualified.

History. Acts 1943, No. 248, § 1; 1951, No. 123, § 1; 1961, No. 430, § 1; A.S.A. 1947, § 19-1016.

14-43-317. [Repealed.]

Publisher's Notes. This section, concerning clerk in cities between 28,000 and 35,000, was repealed by Acts 1993, No.

1121, § 1. The section was derived from Acts 1943, No. 248, § 1; 1951, No. 365, § 1; A.S.A. 1947, § 19-1016.1.

14-43-318. Police judge in cities of the first class.

(a) Only persons who, at the time of filing, are attorneys licensed by the Arkansas Supreme Court and qualified electors of a first-class city may have their names placed on the ballot for election as the police judge of that city.

(b) When a vacancy arises in the office of police judge in a first-class city, the governing body of the city shall fill the vacancy by appointing a licensed attorney residing in the city or, if no licensed attorney residing in the city will accept appointment or if no licensed attorney resides in the city, by appointing any licensed attorney residing in the county wherein the city is located.

History. Acts 1987, No. 684, § 1.

Cross References. Certain inferior courts, § 16-18-101 et seq.

SUBCHAPTER 4 — OFFICERS AND EMPLOYEES GENERALLY**SECTION.**

14-43-401. Mayor generally.

14-43-402 — 14-43-404. [Repealed.]

14-43-405. Treasurer — Clerk-treasurer
in mayor-council cities.

14-43-406. City clerk's seal.

14-43-407. Deputy city attorneys.

SECTION.

14-43-408. [Repealed.]

14-43-409. Compensation of officials generally.

14-43-410. Compensation of city attorneys.

14-43-411. Alderman vacancy.

SECTION.

14-43-412. Vacancies in other elected offices.

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

Acts 1943, No. 154, § 3: Mar. 4, 1943. Emergency clause provided: "Whereas, there now exists no satisfactory and permanent method of filling vacancies in the office of alderman in cities of the first class and whereas, it is highly desirable in the interest of the public peace, health and safety that vacancies in the office of alderman be filled as rapidly as possible after they occur, an emergency is hereby found to exist and this act shall be in full force and effect from and after its passage and approval."

Acts 1957, No. 9, § 5: Feb. 1, 1957. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that laws authorizing the appointment of deputy city attorneys in certain cities of the first class are inadequate in that no specific provision exists for such appointments in many cases; that by reason of physical disability of various city attorneys and the calling into military service of city attorneys, there is an urgent need for specific statutory authority for such appointments and that enactment of this measure will remedy this situation. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1967, No. 431, § 3: Mar. 16, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that the work load of City Attorneys of cities of the First Class is steadily increasing and that the salaries presently provided for such City Attorneys are not sufficient to adequately compensate said Attorneys for their services and that cities of the First Class are without adequate funds to increase the compensation of said City Attorneys for their services and that unless the compensation of City Attorneys is increased, the administration of justice will be seriously hampered. Therefore, an emergency is hereby declared to exist, and this Act, being necessary for the immedi-

ate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

Acts 1977, No. 8, § 3: Jan. 27, 1977. Emergency clause provided: "Whereas, there is uncertainty as to whether the city governing body in cities of the first class can appoint an acting mayor to serve from the time of vacancy until a new mayor is elected at a special election and many cities are unable to adequately perform municipal services for the people of this State because of this uncertainty. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate protection of the public peace, health and safety shall take effect immediately on its passage and approval."

Acts 1981, No. 303, § 4: Mar. 4, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that when vacancies exist in the position of alderman and the remaining term exceeds one year in cities of over 50,000 having a mayor-council form of government and in which the electors of each ward elect at least one (1) alderman, the filling of the vacant position by appointment deprives the people of a voice in filling what should be an elected position; that this Act is designed to correct this undesirable situation and should be given effect immediately. Therefore, an emergency is declared to exist, and this Act being necessary for the immediate protection of the public peace, health and safety shall take effect immediately upon its passage and approval."

Acts 1985, No. 171, § 3: Feb. 22, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law does not specifically authorize cities of the second class to levy fees for prosecutions conducted by the city attorneys of such cities; that second class cities are in urgent need of such authority to enable such cities to provide adequate compensation to their city attorneys and to assure the effective and efficient administration of justice in such cities; and that this Act is designed to expressly grant such authority and should

be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preserva-

tion of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., § 231 et seq.

C.J.S. 62 C.J.S., Mun. Corp., § 462 et seq.

14-43-401. Mayor generally.

(a)(1) The mayor shall hold his office during the term for which he shall have been elected and until his successor shall have been elected and qualified.

(2) The mayor shall keep an office at some convenient place in the city, to be provided by the city council, and shall keep the corporate seal of the city in his charge.

(b)(1) In case of his death, disability, resignation, or other vacation of his office, the council, by vote of a majority of all its members, may appoint some other person to act until the expiration of his term or disability if the unexpired term of his office is less than six (6) months. Otherwise, an election shall be ordered in accordance with the laws of the state. A removal from the city shall be deemed a vacation of his office.

(2) In all cases where the unexpired term has more than six (6) months to run and a special election has been called to fill the vacancy in the office of mayor, the city governing body is authorized to appoint any qualified elector of the city, including any member of the council, to serve as acting mayor until the office is filled at the special election. A member of the council shall not vote on his own appointment.

History. Acts 1875, No. 1, § 53, p. 1; C. §§ 9838, 9839; Acts 1977, No. 8, § 1; & M. Dig., §§ 7695, 7696; Pope's Dig., A.S.A. 1947, § 19-1012.

14-43-402 — 14-43-404. [Repealed.]

Publisher's Notes. These sections, concerning vice mayor for city in county of 40,000 to 45,000; vice mayor for cities of 25,500 to 27,000; vice mayor for cities of 9,500 to 11,500, were repealed by Acts 1995, No. 555, § 1. They were derived from the following sources:

14-43-402. Acts 1969, No. 316, §§ 1-3; A.S.A. 1947, §§ 19-1010.1 — 19-1010.3.

14-43-403. Acts 1971, No. 18, §§ 1, 2; A.S.A. 1947, §§ 19-1010.6, 19-1010.7.

14-43-404. Acts 1971, No. 256, §§ 1, 2; A.S.A. 1947, §§ 19-1010.4, 19-1010.5.

14-43-405. Treasurer — Clerk-treasurer in mayor-council cities.

All cities of the first class having the mayor-council form of government may provide, by ordinance, for the election or appointment of their city treasurer. The city council may, by ordinance or resolution, designate the city clerk as clerk-treasurer, allowing one (1) person to assume the duties of both clerk and treasurer.

History. Acts 1965, No. 484, § 4;
A.S.A. 1947, § 19-1015.2.

14-43-406. City clerk's seal.

(a) Each city council shall cause to be provided for its clerk's office a seal, in the center of which shall be the name of the city and around the margin the words "city clerk."

(b) The seal shall be affixed to all transcripts, orders, or certificates which it may be necessary or proper to authenticate under the provisions of this subtitle, or of any bylaw or ordinance of the city.

(c) For all attested certificates and transcripts, other than those ordered by the council, the same fees shall be paid as are allowed county clerks for similar services.

History. Acts 1875, No. 1, § 61, p. 1; C.
& M. Dig., § 7743; Pope's Dig., § 9939;
A.S.A. 1947, § 19-1017.

14-43-407. Deputy city attorneys.

(a) Any city attorney of a city of the first class, subject to the provisions of this section, shall have the power to appoint one (1) or more deputies for whose official acts the officer appointing the deputy shall be responsible.

(b) A deputy city attorney appointed pursuant to the provisions of this section shall serve at the will of the officer appointing him.

(c) Unless otherwise provided by ordinance of the city council, the salary or other compensation of any deputy city attorney appointed pursuant to this section shall be paid by the city attorney from his own compensation.

(d) This section is cumulative as to any law authorizing the appointment of a deputy city attorney in certain cities of the first class. Nothing contained in this section shall be construed to invalidate the appointment of any such deputy made pursuant to law, nor to change the compensation thereof as previously fixed by law or by the action of any council. Nor shall this section be deemed to limit or impair the right of the council hereafter to fix the compensation or salary of such a deputy appointed pursuant to the provisions of this section or any other legislation.

History. Acts 1957, No. 9, §§ 1-4;
A.S.A. 1947, §§ 19-1019.1 — 19-1019.4.

14-43-408. [Repealed.]

Publisher's Notes. This section, concerning deputy clerks, attorneys, and treasurers in cities between 11,700 and 11,750, was repealed by Acts 1995, No.

555, § 1. The section was derived from Acts 1949, No. 225, § 1; A.S.A. 1947, § 19-1019.

14-43-409. Compensation of officials generally.

All officers provided for in this subtitle, and by ordinance of any city under this subtitle, shall receive such salary as the council of any city may designate, and in no instance shall they receive an additional compensation by way of fees, fines, or perquisites. All fees, fines, or perquisites shall be paid into the city treasury.

History. Acts 1875, No. 1, § 51, p. 1; C. & M. Dig., § 7693; Pope's Dig., § 9836; A.S.A. 1947, § 19-1025.

CASE NOTES

ANALYSIS

In general.
Applicability.
Additional compensation.

In General.

Municipal officers shall receive salaries, but in no instance shall they receive additional compensation. *Miller v. City of Ft. Smith*, 160 Ark. 487, 254 S.W. 1068 (1923).

Applicability.

While this section empowers first-class cities to fix their officers' salaries, nowhere

in Acts 1875, No. 1 is such power given to second-class cities and towns; however, the 1875 act does, by implication, delegate such power to second-class cities and incorporated towns. *Conner v. Burnett*, 216 Ark. 559, 226 S.W.2d 984 (1950).

Additional Compensation.

Attorney who represents city in rate case cannot recover fees out of refund decreed by Supreme Court. *City of Ft. Smith v. Southwestern Bell Tel. Co.*, 220 Ark. 70, 247 S.W.2d 474 (1952).

14-43-410. Compensation of city attorneys.

(a) Any city of the first or second class in the State of Arkansas may, by ordinance, provide that the city attorney of the city shall receive as part of his compensation, for all prosecutions tried by the city attorney for violations of ordinances of the city and for all prosecutions tried by the city attorney for violations of state laws committed within the corporate limits of the cities, the same fees as are allowed prosecuting attorneys in this state in all criminal cases.

(b)(1) By proper ordinance, the city may specify a certain salary or salary and fees, as the council may desire.

(2) In the event the city attorney is paid a salary only, the city is authorized to collect the fees referred to in this section and they are to be applied as the council may direct.

History. Acts 1967, No. 431, § 1; 1985, No. 171, § 1; A.S.A. 1947, § 19-1025.1.

CASE NOTES

Constitutionality.

An ordinance limiting the city attorney's salary to \$1.00 per annum when in fact the city attorney was uncontested in

his bid for the election, passed simultaneously with an ordinance removing the city attorney from office on the eve of the election, was punitive in that it intended

to constructively bar him from assuming the position to which he was duly elected by the people; accordingly, the first ordinance and its implementing resolution

were unconstitutional as bills of attainder. *Crain v. City of Mt. Home*, 611 F.2d 726 (8th Cir. 1979).

14-43-411. Alderman vacancy.

(a)(1) Whenever a vacancy shall occur, for any reason, in the office of alderman in any city of the first class, at any regular meeting after the occurrence of the vacancy, the city council shall proceed to elect by a majority vote of the remaining members elected to the council an alderman to serve for the unexpired term. Provided, however, it is necessary that at least a quorum of the whole number of the city council shall remain in order to fill a vacancy.

(2) The person elected by the council shall be a resident of the ward where the vacancy occurs at the time of the vacancy.

(b) When a vacancy occurs in any position of alderman in a city having a population of fifty thousand (50,000) or more, according to the most recent federal decennial census, and having a mayor-council form of government in which the electors of each ward elect one (1) or more aldermen, a new alderman shall be chosen in the following manner:

(1) If the unexpired portion of the term of alderman exceeds one (1) year, a successor shall be elected by a vote of the electors of the ward. The city council shall order a special election to be held within sixty (60) days of the date the vacancy occurs;

(2) If the unexpired portion of the term of alderman is one (1) year or less, a successor shall be chosen by a majority vote of the members of the council.

History. Acts 1943, No. 154, § 1; 1981, No. 303, § 1; A.S.A. 1947, § 19-1026; Acts 1997, No. 202, § 1.

Amendments. The 1997 amendment,

in (a)(1), substituted "the remaining members" for "all members" and added the last sentence.

CASE NOTES

Reinstatement of Former Alderman.

Where an alderman was regularly elected in a city of the first class to fill the office of an alderman convicted of a crime, he was elected for the unexpired term and, in the absence of a statute providing for reinstatement or restoration to office

under the circumstances, the former alderman could not be reinstated to office upon reversal of his conviction, since the public interest must be considered paramount. *May v. Edwards*, 255 Ark. 1041, 505 S.W.2d 13 (1974).

14-43-412. Vacancies in other elected offices.

(a) In case any office of an elected officer, except aldermen of the ward, shall become vacant before the expiration of the regular term, then the vacancy shall be filled by the city council until a successor is duly elected and qualified.

(b) The successor shall be elected for the unexpired term at the first annual election that occurs after the vacancy shall have happened.

History. Acts 1875, No. 1, § 63, p. 1; C. & M. Dig., § 7746; Pope's Dig., § 9941; A.S.A. 1947, § 19-1027.

SUBCHAPTER 5 — POWERS AND DUTIES GENERALLY

SECTION.

- 14-43-501. Organization of city council.
- 14-43-502. Powers of council generally.
- 14-43-503. Imposition of costs on misdemeanor convictions.
- 14-43-504. Powers and duties of mayor generally.

SECTION.

- 14-43-505. [Repealed.]
- 14-43-506. Duties of city clerk.
- 14-43-507. Duties of treasurers.
- 14-43-508. Duties of collectors.
- 14-43-509. Officers without prescribed terms.

Cross References. Civil service system for cities of 75,000 or over, § 14-49-101 et seq.

Firemen's relief and pension fund board, ex officio officers, § 24-11-801.

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

Acts 1885, No. 67, § 7: effective on passage.

Acts 1913, No. 226, § 2: approved Mar. 29, 1913. Emergency clause provided: "This act, being for the protection of the public peace, health and safety, shall take effect and be in force from and after its passage."

Acts 1995, No. 914, § 7: Apr. 5, 1995. Emergency clause provided: "It is hereby

found and determined by the General Assembly that in some instances vacancies in the positions of the department heads of some cities are not being timely filled; that this results in confusion and inefficiency within the municipal government; that this act provides a mechanism whereby the vacancies in department head positions may be filled more efficiently in a more timely manner; therefore this act should go into effect as soon as possible. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after passage and approval."

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., §§ 139-180, 275-283.

C.J.S. 62 C.J.S., Mun. Corp., § 385 et seq. and § 462 et seq.

14-43-501. Organization of city council.

(a)(1) The aldermen elected for each city shall annually, at the first council meeting in January, assemble and organize the city council.

(2)(A) A majority of the whole number of aldermen shall be necessary to constitute a quorum for the transaction of business.

(B) They shall be judges of the election returns and of the qualifications of their own members.

(C) They shall determine the rules of their proceedings and keep a journal thereof, which shall be open to the inspection and examination of any citizen. They may also compel the attendance of absent members in such manner and under such penalties as they shall think fit to prescribe.

(b)(1)(A) The mayor shall be ex officio president of the council and shall preside at its meetings.

(B) The mayor shall have a vote when his vote is needed to pass any ordinance, bylaw, resolution, order, or motion.

(2) In the absence of the mayor, the council shall elect a president pro tempore.

History. Acts 1875, No. 1, § 51, p. 1; C. §§ 9934-9937; Acts 1981, No. 345, § 1; & M. Dig., §§ 7738-7741; Pope's Dig., A.S.A. 1947, § 19-1010.

CASE NOTES

ANALYSIS

Election returns.

Mayors.

Meetings.

Quorum.

Election Returns.

The authority of a city council is limited to passing upon the face of election returns. *Doherty v. Cripps*, 82 Ark. 529, 102 S.W. 394 (1907).

Mayors.

The mayor is not an elected member of the city council, but only an ex-officio member by virtue of his executive position, and therefore his vote cannot be used in amending or repealing any part of an initiated act; thus, where only five members of a nine-member council voted to repeal an initiated ordinance, there was not the two-thirds majority required by Ark. Const. Amend. 7, and the mayor's favorable vote could not be counted as the sixth vote necessary to attain a two-thirds majority. *Thompson v. Younts*, 282 Ark. 524, 669 S.W.2d 471 (1984).

Where subdivision (b)(1)(B) repealed that part of this section that required a majority of the "aldermen" of a municipal corporation to approve appropriations, mayor of a city of first class could break five to five tie vote to pass no appropriation ordinance. *Gibson v. City of Trumann*, 311 Ark. 561, 845 S.W.2d 515 (1993).

Meetings.

The proceedings of a special meeting of a city council are legal if all the members had notice, whether all attended or not; when all the members of the council are voluntarily present in a council meeting and participate therein, it is a legal meeting for all purposes, unless the law provides otherwise, and an ordinance passed at such a meeting is valid. *City of Mena v. Tomlinson Bros.*, 118 Ark. 166, 175 S.W. 1187 (1915).

Quorum.

An ordinance passed by less than the majority of all the members of a city council is void. *Newbold v. City of Stuttgart*, 145 Ark. 544, 224 S.W. 993 (1920).

14-43-502. Powers of council generally.

(a) The city council shall possess all the legislative powers granted by this subtitle and other corporate powers of the city not prohibited in it or by some ordinance of the city council made in pursuance of the provisions of this subtitle and conferred on some officer of the city.

(b)(1) The council shall have the management and control of finances, and of all the real and personal property belonging to the corporation.

(2)(A) The council shall provide the times and places of holding its meetings, which shall at all times be open to the public.

(B) The mayor, or any three (3) aldermen, may call special meetings in such manner as may be provided by ordinance.

(3) The council shall appoint, or provide by ordinance, that the qualified voters of the city, of the wards, or districts as the case may require, shall elect all such city officers as shall be necessary for the

good government of the city and for the due exercise of its corporate powers, and which shall have been provided by ordinance, as to whose appointment or election provision is not made in this subtitle and not provided by any general law of the state in reference to cities of the first class.

History. Acts 1875, No. 1, § 62, p. 1; C. & M. Dig., § 7744; Pope's Dig., § 9940; A.S.A. 1947, § 19-1011.

CASE NOTES

Committees.

A committee of a city council having jurisdiction over the city parks has no legislative powers, as the legislative pow-

ers are conferred upon the council sitting as such. *Satterfield v. Fewell*, 202 Ark. 67, 149 S.W.2d 949 (1941).

14-43-503. Imposition of costs on misdemeanor convictions.

(a) The governing body of any municipality in this state in all counties which have a population of two hundred thousand (200,000) or more inhabitants, according to the most recent federal decennial census, is authorized to adopt ordinances to impose costs upon each conviction of a misdemeanor or other crime in the municipal court of the municipality.

(b)(1) The governing body may impose specific costs to be used exclusively for police officers' salaries.

(2) All costs so imposed and specifically enacted for such a special "policemen's salary fund" shall be credited to this fund of the municipality and shall be used solely and exclusively for payments of police officers' salaries, and for no other purpose.

History. Acts 1977, No. 564, § 1; A.S.A. 1947, § 19-1011.1.

14-43-504. Powers and duties of mayor generally.

(a) The mayor of the city shall be its chief executive officer and conservator of its peace. It shall be his special duty to cause the ordinances and regulations of the city to be faithfully and constantly obeyed.

(b) The mayor shall:

(1) Supervise the conduct of all the officers of the city, examine the grounds of all reasonable complaints made against them, and cause all their violations of duty or other neglect to be properly punished or reported to the proper tribunal for correction;

(2) Have and exercise the power conferred on sheriffs, within the city limits, to suppress disorder and keep the peace; and

(3) Perform such other duties compatible with the nature of his office as the city council may from time to time require.

(c) [Repealed].

(d) The mayor shall, at the second regular meeting of the council in each year, and at such other times as he shall deem expedient, report to the council the municipal affairs of the city and recommend such measures to it as to him may seem advisable.

(e) The mayor of any city of the first class shall, in addition to the powers and duties already pertaining to that office, be clothed with, and exercise and perform, the following:

(1) A mayor shall have the power to veto, within five (5) days, Sundays excepted, after the action of the city council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his judgment is contrary to the public interests.

(2)(A) In case of a veto, before the next regular meeting of the council, the mayor shall file in the office of the city clerk, to be laid before that meeting, a written statement of his reasons for so doing.

(B) No such ordinance, resolution, or order, or part thereof, vetoed by the mayor shall have any force or validity unless, after the written statement is laid before it, the council shall, by a vote of two-thirds ($\frac{2}{3}$) of all the aldermen elected thereto, pass it over the veto.

History. Acts 1875, No. 1, § 53, p. 1; 1885, No. 67, § 2, p. 92; 1893, No. 42, §§ 1, 2, p. 64; 1913, No. 226, § 1; C. & M. Dig., §§ 7697-7701; Pope's Dig., §§ 9840-9844; Acts 1979, No. 153, §§ 1, 2; A.S.A. 1947, §§ 19-1013, 19-1014; Acts 1991, No. 786, § 14; 1995, No. 534, § 2; 1995, No. 914, § 2.

Publisher's Notes. Acts 1991, No. 786, § 37, provided: "The enactment and adoption of this Act shall not repeal, expressly or impliedly, the acts passed at the regular session of the 78th General Assembly. All

such acts shall have full effect and, so far as those acts intentionally vary from or conflict with any provision contained in this Act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987."

Amendments. The 1995 amendment by Nos. 523 and 914 deleted (e)(2) and (3); and redesignated former (e)(1)(B)(i) and (ii) as present (e)(2)(A) and (B), respectively.

CASE NOTES

ANALYSIS

Construction.
Chiefs of police.
Ordinances, resolutions, or orders.
Salaries.

Construction.

Prior to the enactment of § 14-42-110 in 1995, subdivision (e)(2) of this section and former § 14-43-505 created a property interest for a police chief in the position. *Sykes v. City of Gentry*, 114 F.3d 829 (8th Cir. 1997).

Chiefs of Police.

A chief of police in a city of first class, appointed under an ordinance fixing his term at one year, who surrendered office at the end of the year without protest, was

estopped to claim that his term was two years under this section, and therefore he could not recover salary for the second year. *City of West Helena v. Patrick*, 185 Ark. 71, 46 S.W.2d 36 (1932).

The mayor of a city had the power to appoint the chief of police prior to 1933, when this power was limited only to cities not operating under the municipal Civil Service Act. *Connor v. Ricks*, 212 Ark. 833, 208 S.W.2d 10 (1948).

Subdivision (e)(2) of this section creates a property interest in the chief of police position for any city of the first class by providing for a term of employment, from the date of appointment to the following mayoral election, and by providing for removal only for cause. *Pearson v. City of Paris*, 839 F. Supp. 645 (W.D. Ark. 1993).

Although police chief was hired before 1995, his property interest in his position was eliminated in 1995 when the General Assembly enacted § 14-42-110. *Sykes v. City of Gentry*, 114 F.3d 829 (8th Cir. 1997).

Ordinances, Resolutions, or Orders.

The mayor is required to sign or approve an ordinance in order that it may become effective. *Lewis v. Forrest City Special Imp. Dist.*, 156 Ark. 356, 246 S.W. 867 (1923).

Mayor is entitled to veto resolution of

city council selecting member to board of public welfare. *Steward v. Rust*, 221 Ark. 286, 252 S.W.2d 816 (1952).

Salaries.

Ordinances raising salaries of city officials during their terms of office by allowing each of them an expense account was held contrary to this section, and at most could be treated as an increase to take effect at the expiration of their terms of office. *Laman v. Moore*, 193 Ark. 446, 100 S.W.2d 971 (1937).

14-43-505. [Repealed.]

Publisher's Notes. This section, concerning removal of police or fire chief, was repealed by Acts 1995, No. 534, § 3 and Acts 1995, No. 914, § 3. The section was derived from Acts 1885, No. 67, § 2, p. 92;

1893, No. 42, § 2, p. 64; C. & M. Dig., § 7747; Pope's Dig., § 9943; A.S.A. 1947, § 19-1028. For present law, see §§ 14-42-110 and 14-43-504.

14-43-506. Duties of city clerk.

(a) The city clerk in cities of the first class shall have the custody of all the laws and ordinances of the city and shall keep a regular and correct journal of the proceedings of the city council.

(b)(1) The clerk shall be required to submit, quarterly, a full report and a detailed statement of the financial condition of the city. This report shall show receipts, disbursements, and balance on hand, together with all liabilities of the city.

(2) The report shall be submitted to the council in open session.

History. Acts 1875, No. 1, § 51, p. 1; C. & M. Dig., § 7694; Pope's Dig., § 9837; A.S.A. 1947, § 19-1018.

CASE NOTES

Records.

The record of the passage of an ordinance, duly proved, cannot be contradicted by parol evidence. *Roberts v. Street*

Imp. Dist. No. 2, 156 Ark. 248, 245 S.W. 489 (1922).

Cited: *Condon v. City of Eureka Springs*, 153 F. 566 (W.D. Ark. 1905).

14-43-507. Duties of treasurers.

Treasurers in cities of the first class shall be required to make similar reports as prescribed in § 14-43-506 and shall perform such other duties as may be required by the ordinances of the city.

History. Acts 1875, No. 1, § 51, p. 1; C. & M. Dig., § 7694; Pope's Dig., § 9837; A.S.A. 1947, § 19-1018.

CASE NOTES

Cited: Condon v. City of Eureka Springs, 135 F. 566 (W.D. Ark. 1905).

14-43-508. Duties of collectors.

Collectors in cities of the first class shall be required to make similar reports as prescribed in § 14-43-506 and shall perform such other duties as may be required by the ordinances of the city.

History. Acts 1875, No. 1, § 51, p. 1; C. & M. Dig., § 7694; Pope's Dig., § 9837; A.S.A. 1947, § 19-1018.

Cross References. Fines collected for violation of city ordinances paid to collector, § 16-96-403.

CASE NOTES

Cited: Condon v. City of Eureka Springs, 135 F. 566 (W.D. Ark. 1905).

14-43-509. Officers without prescribed terms.

In cities of the first class, all city officers whose terms of office are not prescribed, and whose powers and duties are not defined in this subtitle, or by bylaw or ordinance, shall perform such duties and exercise such powers, and continue in office two (2) years, unless sooner removed for cause.

History. Acts 1875, No. 1, § 62, p. 1; C. & M. Dig., § 7744; Pope's Dig., § 9940; A.S.A. 1947, § 19-1011.

SUBCHAPTER 6 — POWERS OVER MUNICIPAL AFFAIRS

SECTION.

- 14-43-601. Municipal affairs delineated.
- 14-43-602. Authority generally.
- 14-43-603. Felonies.
- 14-43-604. Gambling.
- 14-43-605. Alcoholic beverages.
- 14-43-606. Taxation generally.

SECTION.

- 14-43-607. Income tax.
- 14-43-608. Regulation of prices.
- 14-43-609. Public utilities and carriers.
- 14-43-610. Reservation of state power.
- 14-43-611. Sale of city property to college or university.

Effective Dates. Acts 1971, No. 266, § 9: Mar. 12, 1971. Emergency clause provided: "Whereas it is found and declared that numerous and pressing needs of Arkansas municipalities are, because of their urgency, creating burdens on the General Assembly due to the requirement that the General Assembly examine each individual problem and authorize each specific power to municipalities, according to the provisions of the so-called Dillon's Rule which requires an express grant of

authority to a municipality by the General Assembly, and which rule is now considered obsolete and should be repealed immediately in order that the General Assembly may attend to matters of statewide concern; therefore, it is declared for these reasons that an emergency exists and this act being essential for the preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

Acts 1971, No. 537, § 4: Apr. 5, 1971.

Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 266 of 1971 was intended to grant broad authorities to cities of the first class to exercise functions or legislative powers pertaining to the local municipal affairs of the city, and that it was not the intention of the General Assembly in Subsection (a) of Section 4 to repeal, restrict, or limit the existing authority of cities of the first class to regulate rates for services charged by public utilities, tele-

phone and telegraph companies, taxicabs, buslines or other utilities or carriers operating under city franchise, and that the immediate passage of this Act is necessary to clarify said Subsection (a) of Section 4 of said Act 266 of 1971. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., §§ 193-230, 423-578.

C.J.S. 62 C.J.S., Mun. Corp., § 106 et seq.

UALR L.J. Goldner, A Call for Reform of Arkansas Municipal Law, 15 UALR L.J. 175.

Halbert, Municipal Law—Utility Franchise Fees—True Nature of Levy Immaterial When City Possesses Statutory Authority. City of Little Rock v. AT&T Communications, Inc., 318 Ark. 616 (1994), 18 UALR L.J. 259.

CASE NOTES

Court Costs.

This subchapter does not give a city council authority to repeal legislation allowing use of court costs to support law

library (§ 16-23-101 et seq.) or to erect law library building (§ 16-23-102). Nahlen v. Woods, 255 Ark. 974, 504 S.W.2d 749 (1974).

14-43-601. Municipal affairs delineated.

(a)(1) For the purposes of this subchapter, the term "municipal affairs" means all matters and affairs of government germane to, affecting, or concerning the municipality or its government, except the following, which are state affairs and subject to the general laws of the State of Arkansas:

- (A) Public information and open meetings;
- (B) Uniform requirements for competitive bidding on contracts;
- (C) Claims against a municipality;
- (D) Requirements of surety bonds for financial officers;
- (E) Collective bargaining;
- (F) Pension and civil service systems;
- (G) Hours and vacations, holidays, and other fringe benefits of employees;
- (H) The definition, use, and control of surplus revenues of municipally owned utilities;
- (I) Vacation of streets and alleys;
- (J) Matters coming within the police power of the state including minimum public health, pollution, and safety standards;
- (K) Gambling and alcoholic beverages;

(L) Traffic on or the construction and maintenance of state highways;

(M) Regulations of intrastate commerce including rates and terms of service of railroad, bus, and truck lines, cooperatives, and non-municipally owned utilities;

(N) The incorporation and merger of municipalities and annexation of territory thereto; and

(O) Procedure for the passage of ordinances by the governing body.

(2) The municipality may exercise any function or legislative power upon the foregoing state affairs if not in conflict with state law.

(b)(1) Matters of public health, which concern emergency medical services, emergency medical technicians, and ambulances, as defined in §§ 20-13-201 — 20-13-209 and 20-13-211, and ambulance companies, shall be included in the term “municipal affairs” of cities of the first class.

(2)(A) These cities shall have the authority to enact and establish standards, rules, or regulations which are equal to, or greater than, those established by the state concerning emergency medical services, emergency medical technicians, ambulances, and ambulance companies.

(B) The standards, rules, or regulations shall not be less than those established by the state for the rating of the service offered.

History. Acts 1971, No. 266, § 2; 1981 (Ex. Sess.), No. 23, § 7; A.S.A. 1947, § 19-1043.

Publisher's Notes. Acts 1985, No. 1001, § 8, provided that nothing in the act

repealed, by implication or otherwise, Acts 1981 (Ex. Sess.), No. 23, which is codified as this section and §§ 14-54-704, 14-137-103, 14-137-106, and 14-266-101 — 14-266-110.

CASE NOTES

ANALYSIS

Gambling and alcoholic beverages.
Police powers of state.
Public health.

Gambling and Alcoholic Beverages.

A first-class city had the power to enact an ordinance that prohibited private clubs from serving or allowing consumption of mixed drinks between 2:00 a.m. and 10:00 a.m., since this section defines alcoholic beverages to be a “state affair” and authorizes any city of the first class to enact an ordinance dealing with state affairs so long as the ordinance avoids conflict with state law. *Tompos v. City of Fayetteville*, 280 Ark. 435, 658 S.W.2d 404 (1983).

Police Powers of State.

This section excludes city control over functions that fall within state police powers. *City of Ft. Smith v. Housing Auth.*, 256 Ark. 254, 506 S.W.2d 534 (1974).

Public Health.

A housing authority is an agent of the state dealing with public health standards, and thus is not a matter pertaining to “municipal affairs.” *City of Ft. Smith v. Housing Auth.*, 256 Ark. 254, 506 S.W.2d 534 (1974).

Cited: *City of Little Rock v. Chartwell Valley Ltd. Partnership*, 299 Ark. 542, 772 S.W.2d 616 (1989).

14-43-602. Authority generally.

Any city of the first class is authorized to perform any function and exercise full legislative power in any and all matters of whatsoever nature pertaining to its municipal affairs including, but not limited to, the power to tax.

History. Acts 1971, No. 266, § 1;
A.S.A. 1947, § 19-1042.

CASE NOTES**ANALYSIS**

Constitutionality.
Financial affairs.

Constitutionality.

The delegation by the legislature of authority to first-class cities to legislate upon an existing general law is prohibited by Ark. Const., Art. 12, § 4. *City of Ft. Smith v. Housing Auth.*, 256 Ark. 254, 506 S.W.2d 534 (1974).

It is unconstitutional to interpret this section as conferring upon a city the authority to repeal, by an implementing ordinance, a general law and substitute its own method of filling vacancies on a housing authority board. *City of Ft. Smith v. Housing Auth.*, 256 Ark. 254, 506 S.W.2d 534 (1974).

This section, under Ark. Const., Art. 12, § 4 and under § 14-43-601, could not be interpreted to abridge § 14-169-208 in respect to filling of vacancies on a board of commissioners of a local housing authority. *City of Ft. Smith v. Housing Auth.*, 256 Ark. 254, 506 S.W.2d 534 (1974).

Financial Affairs.

This section contains authority for a city ordinance to create a position of finance director to handle the financial affairs of the city. *Besharse v. City of Blytheville*, 254 Ark. 382, 493 S.W.2d 708 (1973).

Cited: *Tompos v. City of Fayetteville*, 280 Ark. 435, 658 S.W.2d 404 (1983); *Paragould Cablevision, Inc. v. City of Paragould*, 305 Ark. 476, 809 S.W.2d 688 (1991).

14-43-603. Felonies.

No municipality may declare any act a felony.

History. Acts 1971, No. 266, § 3;
A.S.A. 1947, § 19-1044.

14-43-604. Gambling.

No municipality may authorize gambling.

History. Acts 1971, No. 266, § 3;
A.S.A. 1947, § 19-1044.

RESEARCH REFERENCES

Ark. L. Rev. Kindt, Legalized Gambling Activities as Subsidized by Taxpayers, 48 Ark. L. Rev. 889.

14-43-605. Alcoholic beverages.

No municipality may authorize the sale or consumption of alcoholic beverages.

History. Acts 1971, No. 266, § 3; A.S.A. 1947, § 19-1044.

14-43-606. Taxation generally.

(a) No municipality shall levy any sales, which includes gross receipts or gross proceeds, use, payroll, or income tax other than those authorized by law.

(b) No tax on alcoholic beverages shall be levied by a municipality other than those authorized by law.

History. Acts 1971, No. 266, § 4; 1971, No. 537, § 1; A.S.A. 1947, § 19-1045. **Cross References.** Taxation generally, § 26-73-101 et seq.

14-43-607. Income tax.

(a) After approval of a majority of those voting on the question in the municipality in a general or special election, a city of the first class may levy a tax on income of individual residents of that city.

(b) Upon the condition that a tax is levied pursuant to this section at the same or higher rate upon income of individual residents of that city, then the city may, after approval at the same election required in this section or at a subsequent election, levy a tax on income earned by other individuals derived from activities, services rendered, or employment within the levying city.

(c) The rate of tax on income authorized by this section shall be a single percentage of the net income tax payable to the State of Arkansas.

(d)(1) One-half ($\frac{1}{2}$) of a taxpayer's income which is subject to a tax authorized by this section, in a city which is not his residence, shall be exempt from payment of the tax if a tax authorized by this section is levied by a city in which the taxpayer resides.

(2) The other one-half ($\frac{1}{2}$) of a taxpayer's income subject to a tax authorized by this section shall be exempt from payment of the tax authorized by this section in the city in which the taxpayer resides.

(e)(1)(A) The governing body of any city levying the tax authorized in this section and the Director of the Department of Finance and Administration of the State of Arkansas are authorized and empowered to enter into a contractual agreement whereby the director shall collect any of the taxes assessed by the city, whether by withholding of income tax or otherwise, and remit them to the city.

(B) This agreement may also provide for a consideration to be allowed the director for services rendered in making such collections.

(2) The director may establish regulations concerning the procedures for collecting these taxes by him.

History. Acts 1971, No. 266, § 4;
A.S.A. 1947, § 19-1045.

14-43-608. Regulation of prices.

(a) No municipality shall have the power to regulate prices for goods, rentals, or services sold or performed within the municipality by individuals or firms.

(b) Nothing in this section shall prohibit municipalities from establishing prices for goods, rentals, or services furnished by, or performed by, the municipality or an instrumentality thereof.

History. Acts 1971, No. 266, § 4; 1971,
No. 537, § 1; A.S.A. 1947, § 19-1045.

14-43-609. Public utilities and carriers.

Nothing in this subchapter shall be construed to repeal, limit, modify, or affect any of the powers conferred upon cities of the first class to regulate, in the manner prescribed by law, the rates or charges to be made for services rendered in the city by any regulated public utility or carrier operating under franchise issued by the city including, but not limited to, any of the following:

- (1) Electric, gas, or water utilities;
- (2) Telephone or telegraph companies;
- (3) Taxicabs;
- (4) City bus companies; or
- (5) Other utilities or carriers operating under public service franchise issued by the city.

History. Acts 1971, No. 266, § 4; 1971,
No. 537, § 1; A.S.A. 1947, § 19-1045.

14-43-610. Reservation of state power.

Nothing in this subchapter shall limit the power reserved to the General Assembly to specifically limit the exercise of any powers, functions, and authority granted in this subchapter.

History. Acts 1971, No. 266, § 5; A.S.A.
1947, § 19-1046.

Publisher's Notes. Acts 1971, No. 266,
§ 7, provided that any existing state statute which now limits or prohibits the exercise of a function or legislative power of a city of the first class pertaining to its municipal affairs is hereby repealed upon the passage of an ordinance or resolution by a city of the first class which provides

for, regulates, controls or otherwise affects its municipal affairs now limited by that state statute. It is the intent of this Section that State laws now limiting or prohibiting the exercise of a function or legislative power of a city of the first class pertaining to its municipal affairs shall remain in effect until action is taken on the subject matter of said statute by the governing body of a city of the first class.

14-43-611. Sale of city property to college or university.

Any city of the first class may sell, under such terms and conditions as it deems appropriate, city property to any publicly supported postsecondary educational institution.

History. Acts 1993, No. 1044, § 1.

CHAPTER 44**GOVERNMENT OF CITIES OF THE SECOND CLASS****SECTION.**

- 14-44-101. Creation of wards.
- 14-44-102. Redistricting of wards.
- 14-44-103. Election of aldermen.
- 14-44-104. Vacancy in alderman's office.
- 14-44-105. Election of mayor.
- 14-44-106. Vacancy in mayor's office.
- 14-44-107. Powers of mayor generally.
- 14-44-108. Mayor and city court.
- 14-44-109. City marshal, recorder, and treasurer generally.
- 14-44-110. Residency of appointed marshals.

SECTION.

- 14-44-111. Election or appointment of marshal.
- 14-44-112. Vacancy in marshal's office.
- 14-44-113. Powers and duties of marshals.
- 14-44-114. Recorder-treasurer offices combined.
- 14-44-115. Election of recorder or recorder-treasurer.
- 14-44-116. Vacancy in recorder's office.
- 14-44-117. City collectors.

Cross References. City attorney, § 14-42-112.

Firemen's relief and pension fund board, ex officio officers, § 24-11-801.

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

Acts 1881, No. 16, § 3: effective on passage.

Acts 1883, No. 63, § 3: effective on passage.

Acts 1887, No. 10, § 2: effective on passage.

Acts 1921, No. 450, § 2: effective on passage.

Acts 1927, No. 124, § 2: effective on passage.

Acts 1929, No. 251, § 5: effective on passage and approval.

Acts 1949, No. 42, § 3: approved Feb. 2, 1949. Emergency clause provided: "This Act being necessary for the immediate protection of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after passage."

Acts 1949, No. 44, § 4: Feb. 3, 1949. Emergency clause provided: "This Act being necessary for the protection of the public peace, health and safety, an emer-

gency is hereby declared and this Act shall be in full force and effect from and after its passage and approval."

Acts 1953, No. 172, § 3: approved Mar. 2, 1953. Emergency clause provided: "It is found and is hereby declared by the General Assembly that many cities of the second class are suffering because of inadequate law enforcement, therefore an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage."

Acts 1953, No. 184, § 4: Mar. 2, 1953.

Acts 1967, No. 427, § 3: Mar. 16, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws of this State authorize the city council of cities of the second class to fill vacancies in the office of Mayor of such cities, and do not afford an opportunity whereby all electors of said cities may be permitted to vote in choosing a Mayor to fill the unexpired portion of the term; and that the immediate passage of this Act is necessary to correct this situation. Therefore, an emergency is hereby declared to exist, and this Act being im-

mediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after the date of its passage and approval.”

Acts 1979, No. 10, § 3: Jan. 30, 1979. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Arkansas Supreme Court in a 1950 case involving an elected city marshal in a city of the second class held that the city marshal was an officer of the city and must reside within the corporate limits of the city; that the General Assembly by Act 172 of 1953 permitted city councils in cities of the second class to pass an ordinance providing the city marshal would be appointed by the mayor rather than elected by the people; that the elected city marshal is an elected officer and, therefore, of necessity is required to be a qualified elector of the city which includes being a legal resident of the city, but an appointed city marshal is an employee of the city similar to members of police departments in cities of the first class and many cities and towns permit their employees to reside outside the corporate limits; and, there is currently great confusion concerning whether an appointed city marshal must also be a legal resident, and that this Act is designed to

correct this confusion and should be given effect as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 1122, § 5: Apr. 5, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that there are cities in Arkansas whose governing bodies have not been able to meet due to lack of a quorum, and have thus been unable to enact legislation or conduct business which is necessary to the operation of the city and the provision of necessary services to the citizens in the city. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date on its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

14-44-101. Creation of wards.

(a) As soon as practicable after an incorporated town becomes a city of the second class, the city council shall form the city into the number of wards that, to it, will seem to best serve the interests of the city.

(b) It shall be the duty of the council to see that each ward has as nearly an equal population to each of the other wards as would best serve the interests of the taxpayers of the city.

History. Acts 1949, No. 44, § 1; 1983, No. 253, § 2; A.S.A. 1947, § 19-1113.

14-44-102. Redistricting of wards.

(a) City councils in cities of the second class shall have the authority to redistrict the wards of their cities when they determine that the people can best be served by adding wards, combining wards, or changing ward boundary lines to equalize the populations in the various wards.

(b)(1) Within ninety (90) days after redistricting, if fifty (50) or more qualified electors in the city are dissatisfied with the division of the city into wards, they shall have the authority to petition the circuit court.

(2) The court, after due hearing, shall have authority to redistrict the city into such wards as it shall deem best if it finds that the redistricting action by the council was arbitrary and capricious.

History. Acts 1949, No. 44, §§ 1, 2; 1983, No. 253, §§ 2, 3; A.S.A. 1947, §§ 19-1113, 19-1114.

14-44-103. Election of aldermen.

(a)(1) The qualified voters in cities of the second class shall, on the Tuesday following the first Monday in November 1982, and every two (2) years thereafter, elect for each of the wards of these cities two (2) aldermen, who shall compose the city council.

(2)(A) The qualified electors of every city of the second class shall elect from each ward of the city two (2) aldermen, who shall be designated as alderman number 1 and alderman number 2 of the ward.

(B)(i) Each candidate for the office of alderman in any election for this office shall designate, in writing, the number of the alderman's office that he is seeking at the time that he files as a candidate for the office.

(ii) When this designation shall have been made, the candidate shall not be permitted thereafter to change his designation.

(b)(1)(A) Candidates for the office of alderman in cities of the second class shall reside in the ward from which they seek to be elected and shall run for election at large. All of the qualified electors of these cities shall be entitled to vote in the election.

(B) Provision shall be made by the election commissioners in these cities so that the qualified electors of each ward shall have at least one (1) voting precinct in each ward where the resident electors thereof may cast their ballots.

(2) If any duly elected alderman shall cease to reside in the ward from which he was elected, that person shall be disqualified to hold the office and a vacancy shall exist, which shall be filled as prescribed by law.

(c)(1)(A) The city council of any such city is empowered and authorized to provide, by ordinance, that all aldermen be elected by ward, in which event each alderman shall be voted upon by the qualified electors of the ward from which the person is a candidate.

(B)(i) When so provided by city ordinance, the name of the candidate shall appear upon the ballot only in the ward in which he is a candidate.

(ii) The city council of these cities may provide for the election of one (1) alderman from each ward citywide and the other aldermen from each ward by the voters of the ward only.

(2) All such cities choosing to elect all aldermen by wards or part by wards shall provide, in the manner provided by law, for the establishment of wards of substantially equal population in order that each alderman elected from each ward shall represent substantially the same number of people in the city.

(d) Cities of the second class that elect their aldermen citywide may have one (1) public place only for holding elections.

History. Acts 1887, No. 10, § 1, p. 11; C. & M. Dig., § 7679; Pope's Dig., § 9801; Acts 1953, No. 184, §§ 1-3; 1961, No. 444, § 2; 1965, No. 484, § 3; 1969, No. 45, § 1; 1973, No. 501, § 1; 1981, No. 346, § 1; 1985, No. 421, § 1; A.S.A. 1947, §§ 19-1002.7, 19-1101 — 19-1101.3.

A.C.R.C. Notes. This section combines the provisions of A.S.A. §§ 19-1101 —

19-1101.3, which governed elections of aldermen in cities of the second class, with compatible provisions of A.S.A. § 19-1002.7, which originally governed only cities of the first class, but was amended in 1985 to apply to elections of aldermen in cities of the second, as well as the first, class.

CASE NOTES

ANALYSIS

Election procedures.

—Compliance.

—Time.

—Voting.

Election Procedures.

—Compliance.

Election procedures that are mandatory before an election are only directory after the election; therefore, failure of city council to comply with the election procedures of this section after ordinance had been passed raising the municipality from a town to a city of the second class had no effect on special election called for the purpose of issuing bonds for city improvement. *Luther v. Gower*, 233 Ark. 496, 345 S.W.2d 608 (1961).

—Time.

A city of the second class that was raised from an incorporated town in June,

1908, was required to hold its next election on the first Tuesday in April, 1910, and persons voted for in a pretended election held in 1911 acquired no right thereby to the offices which they claimed to hold thereunder. *McMahan v. State*, 102 Ark. 12, 143 S.W. 94 (1912) (decision prior to 1981 amendment).

—Voting.

Failure to have a voting precinct in each ward as required by this section will not affect the validity of the election where there is no showing that such failure resulted in denying any voter the privilege of voting. *Rogers v. Mason*, 246 Ark. 1, 436 S.W.2d 827 (1969).

Cited: *Thomas v. Sitton*, 213 Ark. 816, 212 S.W.2d 710 (1948); *Sitton v. Burnett*, 216 Ark. 574, 226 S.W.2d 544 (1950); *Gore v. Emerson*, 262 Ark. 463, 557 S.W.2d 880 (1977).

14-44-104. Vacancy in alderman's office.

Whenever a vacancy shall occur in the office of alderman in any city of the second class, at the first regular meeting after the occurrence of the vacancy, the city council shall proceed to elect, by a majority vote of the council, an alderman to serve for the unexpired term.

History. Acts 1927, No. 124, § 1; Pope's Dig., §§ 9802, 9942; A.S.A. 1947, § 19-1111.

CASE NOTES

ANALYSIS

Authority of circuit court.
Election.

Authority of Circuit Court.

Where the circuit court acted outside of its statutory authority in directing that a special election be held and because of the public policy considerations inherent in the election of public officials, the order of the circuit court was reversed and remanded for an order declaring a vacancy

in the alderman's position and for additional proceedings as may be required. *Phillips v. Earngey*, 321 Ark. 476, 902 S.W.2d 782 (1995).

Election.

Where aldermen received a majority vote when selected, the fact that there was no formal motion and second did not render their election illegal, as a motion and a second are not required for a valid city council vote. *O'Brien v. City of Greers Ferry*, 293 Ark. 19, 732 S.W.2d 146 (1987).

14-44-105. Election of mayor.

The qualified voters of cities of the second class shall, on the Tuesday following the first Monday in November 1966, and every four (4) years thereafter, elect a mayor for a term of four (4) years.

History. Acts 1965, No. 554, § 1;
A.S.A. 1947, § 19-1101.4.

14-44-106. Vacancy in mayor's office.

Whenever a vacancy shall occur in the office of mayor in any city of the second class, at the first regular meeting after the occurrence of the vacancy, the city council shall proceed to either elect, by a majority vote of the aldermen, a mayor to serve the unexpired term or call for a special election to be held in accordance with § 14-42-206 to fill the vacancy. At this election, a mayor shall be elected to fill out the unexpired term.

History. Acts 1959, No. 54, § 1; 1967, No. 427, § 1; A.S.A. 1947, § 19-1110; Acts 1997, No. 645, § 4.

Amendments. The 1997 amendment

substituted "in accordance with § 14-42-206" for "within thirty (30) days" in the first sentence of this section.

CASE NOTES

ANALYSIS

Election or appointment.
Special elections.

Election or Appointment.

The election or appointment of a mayor to fill a vacancy must be proved by the record itself in the absence of proof that such record has been lost or destroyed. *Hill v. Rector*, 161 Ark. 574, 256 S.W. 848 (1923).

Special Elections.

If the provisions of the general election laws as to the certification of nomination,

printing of ballots, and forbidding the printing thereon of the name of any candidate not certified and filed in the time prescribed apply to special elections for mayor, these irregularities will not avoid such an election at the instance of one who holds the office of mayor without authority and was not a candidate at the special election. *Hogins v. Bullock*, 92 Ark. 67, 121 S.W. 1064 (1909) (decision under prior law).

14-44-107. Powers of mayor generally.

(a) The mayor in cities of the second class shall be ex officio president of the city council, shall preside at its meetings, and shall have a vote to establish a quorum of the council, or when the mayor's vote is needed to pass any ordinance, bylaw, resolution, order, or motion.

(b)(1) The mayor in these cities shall have the power to veto, within five (5) days, Sundays excepted, after the action of the council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his judgment is contrary to the public interest.

(2)(A) In case of a veto, before the next regular meeting of the council, the mayor shall file in the office of the city recorder, to be laid before the meeting, a written statement of his reasons for so doing.

(B) No ordinance, resolution, or order, or part thereof, vetoed by the mayor shall have any force or validity unless, after the written statement is laid before it, the council shall, by a vote of two-thirds ($\frac{2}{3}$) of all the aldermen elected thereto, pass it over the veto.

History. Acts 1887, No. 10, § 1, p. 11; C. & M. Dig., § 7679; Pope's Dig., § 9801; Acts 1981, No. 346, § 1; A.S.A. 1947, § 19-1101; Acts 1997, No. 1122, § 1.

Amendments. The 1997 amendment

inserted "to establish a quorum of the council, or" in (a).

Cross References. Removal of elective or appointive officers, § 14-42-109.

CASE NOTES**Voting.**

The mayor of a second class city is a member of the council of a second class city and thereby entitled to vote on the municipal council's ordinances. *Clark v. Mahan*, 268 Ark. 37, 594 S.W.2d 7 (1980).

Cited: *Thomas v. Sitton*, 213 Ark. 816, 212 S.W.2d 710 (1948); *Sitton v. Burnett*, 216 Ark. 574, 226 S.W.2d 544 (1950); *Gore v. Emerson*, 262 Ark. 463, 557 S.W.2d 880 (1977).

14-44-108. Mayor and city court.

(a) The mayor of a city of the second class shall have, within the limits of the city, all the jurisdiction and power of a justice of the peace in all civil or criminal matters arising under the laws of this state, to all intents and purposes. For crimes and offenses committed within the limits of the city, the mayor's jurisdiction shall be coextensive with the county.

(b) Any mayor may designate, at such times as he shall choose to do so, any attorney regularly licensed to practice law and a resident of the county in which the city or town is located, to sit in the mayor's stead as judge of the city court. All fines and penalties assessed by the court in such a case shall continue to be paid into the city treasury. The attorney sitting in the stead of the mayor shall charge and collect the same fees as justices of the peace are allowed for similar service.

(c) The mayor shall give bond and security in any amount to be determined and approved by the city council.

(d)(1) The mayor shall have exclusive jurisdiction of all prosecutions for violation of any ordinances of the city;

(2) He may award and issue any process or writs that may be necessary to enforce the administration of justice throughout the city, and for the lawful exercise of his jurisdiction, according to the usages and principles of law; and

(3) He shall receive, in the discharge of the duties of a justice of the peace, the same fees and compensation as may be allowed them by law.

History. Acts 1875, No. 1, § 48, p. 1; 1881, No. 16, § 1, p. 29; 1883, No. 63, § 2, p. 97; C. & M. Dig., § 7681; Pope's Dig., § 9809; Acts 1941, No. 284, § 2; A.S.A. 1947, § 19-1102; Acts 1995, No. 298, § 1.

Cross References. No jury trial in city court, § 16-96-112.

Recorder authorized to act in mayor's stead when mayor unable to perform duties, § 14-42-111.

Self-Insured Fidelity Bond Program, § 21-2-701 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Arkansas' Judiciary: Its History and Structure, 18 Ark. L. Rev. 152.

CASE NOTES

ANALYSIS

Constitutionality.

In general.

Fines and penalties.

Jurisdiction.

Substitutes.

Constitutionality.

A defendant appearing in the city court on charges of violating a city ordinance was deprived of due process of law when the mayor, who was sitting as judge of the court, also presided over meetings of the city council where decisions were made concerning the expenditures of revenue from fines, forfeitures, and penalties. *Gore v. Emerson*, 262 Ark. 463, 557 S.W.2d 880 (1977).

In General.

Provision in § 14-45-106 exempting five counties from provisions of § 14-45-106 governing mayor's court in incorporated towns does not apply to this section, governing mayor's court in second class cities; hence this section is not invalid on the ground of local legislation. *City of Mt. Home v. Ray*, 223 Ark. 553, 267 S.W.2d 503 (1954).

Fines and Penalties.

A city is entitled to retain all the fines and penalties imposed by the mayor's court for violation of its ordinances, notwithstanding that the ordinances make the same acts offenses as are made offenses against the state by statute, and the county is entitled only to such fines and penalties as are imposed by the mayors of these courts, acting in their capacity of justices of the peace for violation of the state laws within their jurisdiction. *Incorporated Town of Pocahontas v. State ex. rel. Randolph County*, 114 Ark. 448, 170 S.W. 89 (1914).

Jurisdiction.

The jurisdiction of the mayor's court, like that of the justice of the peace, is subject to a motion to transfer to municipal court when a state offense is involved. *Russell v. Miller*, 253 Ark. 583, 487 S.W.2d 617 (1972); *City Court v. Tiner*, 292 Ark. 253, 729 S.W.2d 399 (1987).

Divestment of jurisdiction from the city court is not contrary to Ark. Const., Art. 7, § 43, which gives the General Assembly authority to set jurisdiction of corporation courts. *City Court v. Tiner*, 292 Ark. 253, 729 S.W.2d 399 (1987).

Writ of prohibition held proper where

trial court was entirely without jurisdiction. *City Court v. Tiner*, 292 Ark. 253, 729 S.W.2d 399 (1987).

Incorporated Town of Pocahontas v. State ex rel. Randolph County, 114 Ark. 448, 170 S.W. 89 (1914).

Substitutes.

Should a mayor become disqualified, the city recorder may act in his place.

14-44-109. City marshal, recorder, and treasurer generally.

(a) At the time prescribed in this subtitle, the qualified voters of each city of the second class shall elect a city marshal, city recorder, and city treasurer. Each of these officers shall continue in office until his successor is elected and qualified.

(b) These officers shall have such powers and perform such duties as are prescribed in this subtitle, or as may be prescribed by any ordinance of the city, consistent with the provisions of this subtitle.

History. Acts 1875, No. 1, § 49, p. 1; § 7682; Pope's Dig., § 9810; A.S.A. 1947, 1881, No. 16, § 2, p. 29; C. & M. Dig., § 19-1103.

CASE NOTES

ANALYSIS

City marshals.

- Appointment or election.
- Authority.
- Compensation.
- Duties.

City Marshals.

—Appointment or Election.

This section provides that a city marshal shall be elected; therefore a person appointed by a city council is only a de facto officer and has no right to salary. *Thomas v. Sitton*, 213 Ark. 816, 212 S.W.2d 710 (1948) (decision prior to § 14-44-111).

While this section requires a city to have an elected city marshal, the fact that the city attempted to change the office to an appointive one by an ordinance that failed for lack of publication required by § 14-55-206 was of no consequence, and the city marshal who was subsequently elected in a general election was duly elected and would be entitled to hold office for his elective period. *Clark v. Mahan*, 268 Ark. 37, 594 S.W.2d 7 (1980).

—Authority.

Prior to the effective date of § 14-44-111, a city council was without power to pass an ordinance abolishing the elective office of marshal and transferring his pow-

ers to a chief of police. *City of Augusta v. Angelo*, 225 Ark. 884, 286 S.W.2d 321 (1956).

—Compensation.

Where city marshal held over and continued to perform the duties of his office after expiration of his term, he was entitled to the same compensation he received during the regular term, and an attempt by the city to reduce such compensation was ineffective. *City of Berryville v. Binam*, 222 Ark. 962, 264 S.W.2d 421 (1954).

Where city marshal holds over and continues to perform the duties of his office after expiration of his term, he is entitled to compensation up to the time he ceases to discharge his duties, and the period of holding over in such cases is as much a part of the officer's term of office as the regular period fixed by law. *City of Berryville v. Binam*, 222 Ark. 962, 264 S.W.2d 421 (1954).

Marshal of city of second class is an officer and therefore his salary was governed by the provisions of Acts 1875, No. 1, § 86 (6th to 8th sentences) (superseded by § 14-42-113). *Horton v. City of Marshall*, 227 Ark. 141, 296 S.W.2d 418 (1956).

—Duties.

This section contemplates that other duties may be performed by a city mar-

shal and authorizes the establishing of other officers for law enforcement, for whose duties the city is authorized to pay. *Conner v. Burnett*, 216 Ark. 559, 226 S.W.2d 984 (1950).

Cited: *City of Greenbrier v. Cotton*, 293 Ark. 264, 737 S.W.2d 444 (1987).

14-44-110. Residency of appointed marshals.

Cities of the second class shall have the authority to require their appointed marshals to reside within their corporate limits, and they shall have the authority to permit their appointed marshals to reside outside their corporate limits.

History. Acts 1979, No. 10, § 1; A.S.A. 1947, § 19-1103.4.

CASE NOTES

Constitutionality.

A city marshal is an officer within the meaning of Ark. Const., Art. 19, § 3, and therefore must be a resident of the city.

Thomas v. Sitton, 213 Ark. 816, 212 S.W.2d 710 (1948) (decision under prior law).

14-44-111. Election or appointment of marshal.

The city marshal of cities of the second class shall be elected by the voters as provided by law. However, the city council of any such city, if the council deems it to be in the best interests of the city, and upon passage of an ordinance by the majority of the council, may provide that the marshal shall be appointed or removed by the mayor unless the council shall, by a two-thirds ($\frac{2}{3}$) majority of the total membership of the council, vote to override the mayor's action.

History. Acts 1953, No. 172, § 1; 1983, No. 79, § 1, A.S.A. 1947, § 19-1103.2.

Cross References. Removal of city marshal by mayor, § 14-42-110.

CASE NOTES

ANALYSIS

In general.
Appointments.
Elections.
Removals.

In General.

Prior to the effective date of this section, a city council was without power to pass an ordinance abolishing the elective office of marshal and transferring his powers to a chief of police. *City of Augusta v. Angelo*, 225 Ark. 884, 286 S.W.2d 321 (1956).

Appointments.

Where a city ordinance making the marshal's office appointive rather than

elective was adopted by the affirmative votes of the mayor and of two of the four councilmen, the ordinance was validly enacted, since the mayor of a second class city is a member of the council and thereby entitled to vote. *Clark v. Mahan*, 268 Ark. 37, 594 S.W.2d 7 (1980).

Elections.

While § 14-44-109 requires a city to have an elected city marshal, the fact that the city attempted to change the office to an appointive one by an ordinance that failed for lack of publication required by § 14-55-206 was of no consequence, and the city marshal who was subsequently elected in a general election was duly

elected and would be entitled to hold office for his elective period. *Clark v. Mahan*, 268 Ark. 37, 594 S.W.2d 7 (1980).

Removals.

A mayor did not have statutory authority to remove city marshal without the approval of city council, nor did the mayor have inherent power to do so, since he was in no way responsible for the performance of the marshal's duties. *Kennedy v. Garner*, 230 Ark. 698, 326 S.W.2d 810 (1959) (decision prior to 1983 amendment).

Where city marshal continued to serve after passage of this section and to draw his salary until his services were found to be unsatisfactory, he recognized the power of the city to remove him at any time, and if he had wanted the protection of Acts 1875, No. 1, § 86 (6th to 8th sentences) (superseded by § 14-42-113) and to remain on the basis of fees due a constable, he should have made the claim before an ordinance was enacted under this section. *Jeffery v. City of Mt. View*, 235 Ark. 657, 361 S.W.2d 540 (1962).

Where city marshal took the monthly payment under ordinance enacted under this section, he precluded himself from challenging the validity of the ordinance regulating his salary and tenure of office. *Jeffery v. City of Mt. View*, 235 Ark. 657, 361 S.W.2d 540 (1962).

City marshal is employee at will and his discharge is not wrongful; ultimate rehire is not a statutory override. Even if written city personnel policy provided for discharge only with cause or even if the city council meeting minutes clearly reflected that city council voted for a policy of no discharge until after three reprimands, city marshal would not prevail, since state law provides that a city marshal may be discharged by the mayor, subject only to an override by a two-thirds vote of the city council. *Robbins v. City of Dover*, 294 Ark. 432, 743 S.W.2d 807 (1988).

Cited: *City of Greenbrier v. Cotton*, 293 Ark. 264, 737 S.W.2d 444 (1987).

14-44-112. Vacancy in marshal's office.

Whenever a vacancy shall occur in the office of marshal in any city of the second class, at the first regular meeting after the occurrence of the vacancy, the city council shall proceed to elect, by a majority vote of all the aldermen, a marshal to serve for the unexpired term.

History. Acts 1921, No. 450, § 1; Pope's Dig., § 9811; A.S.A. 1947, § 19-1112.

CASE NOTES

ANALYSIS

Holding over.
Voting.

Holding Over.

Where city marshal held over and continued to perform the duties of his office after expiration of his term, he was entitled to the same compensation he received during the regular term, and an attempt by the city to reduce such compensation was ineffective. *City of Berryville v. Binam*, 222 Ark. 962, 264 S.W.2d 421 (1954).

Where city marshal holds over and continues to perform the duties of his office

after expiration of his term, he is entitled to compensation up to the time he ceases to discharge his duties, and the period of holding over in such cases is as much a part of the officer's term of office as the regular period fixed by law. *City of Berryville v. Binam*, 222 Ark. 962, 264 S.W.2d 421 (1954).

Voting.

A motion and a second are not required for a valid city council vote. *O'Brien v. City of Greers Ferry*, 293 Ark. 19, 732 S.W.2d 146 (1987).

Cited: *Thomas v. Sitton*, 213 Ark. 816, 212 S.W.2d 710 (1948).

14-44-113. Powers and duties of marshals.

(a) The marshal of cities of the second class shall execute and return all writs and process directed to him by the mayor. In criminal cases or cases of a violation of the city ordinance, he may serve them in any part of the county.

(b) It shall be the marshal's duty to:

(1) Suppress all riots and disturbances and breaches of the peace;

(2) Apprehend all disorderly persons in the city;

(3) Pursue and arrest any person fleeing from justice in any part of the state; and

(4) Apprehend any person in the act of committing any offense against the laws of the state or ordinances of the city and forthwith to bring such persons before the mayor, or other competent authority, for examination or trial.

(c) The marshal shall have power to appoint one (1) or more deputies, for whose official acts he shall be responsible.

(d) In the discharge of his proper duties, the marshal shall have like powers, be subject to like responsibilities, and receive the like fees as sheriffs and constables in similar cases.

History. Acts 1875, No. 1, § 50, p. 1; C. & M. Dig., § 7683; Pope's Dig., § 9812; A.S.A. 1947, § 19-1104.

CASE NOTES**ANALYSIS**

Compensation.

Deputies.

Powers.

Compensation.

Statutory provision that city marshal shall receive like fees as sheriffs and constables in similar cases does not prevent a second-class city from paying the marshal a salary. *Conner v. Burnett*, 216 Ark. 559, 226 S.W.2d 984 (1950).

City council was not required to pay duly elected city marshal any certain or stated salary, or any salary at all, in addition to the fees provided by this section, and the city's authority to fix his salary was unrestricted, except that it could not change his salary during any certain term once it had been fixed. *City of Augusta v. Angelo*, 225 Ark. 884, 286 S.W.2d 321 (1956) (decision prior to § 14-42-113).

Deputies.

In an action against a city by deputy marshal for salary fixed by ordinance, the

burden is on the plaintiff to prove the existence of the ordinance obligating the city to pay him the salary claimed. *City of El Dorado v. Faulkner*, 107 Ark. 455, 155 S.W. 516 (1913).

Where deputy marshals, who had been appointed for one year, were dismissed by mayor who exceeded his authority, they were not entitled to receive their salaries where they did no work after dismissal, even though there was a city ordinance fixing their salaries, but were only entitled to the fees set out in this section for deputy marshals. *City of Jacksonville v. Williams*, 238 Ark. 519, 383 S.W.2d 103 (1964).

Although a marshal may appoint deputies pursuant to this section, it is the exclusive responsibility of the city council to determine whether any salary shall be paid. *City of Greenbrier v. Cotton*, 293 Ark. 264, 737 S.W.2d 444 (1987).

Powers.

Prior to the effective date of § 14-44-111, a city council was without power to pass ordinance abolishing the elective of-

fice of marshal and transferring his powers to the chief of police. *City of Augusta v. Angelo*, 225 Ark. 884, 286 S.W.2d 321 (1956).

14-44-114. Recorder-treasurer offices combined.

(a) The city council of any city of the second class in the State of Arkansas, if the council deems it to be in the best interests of the city, and upon passage of an ordinance by a majority vote of the council, may combine the offices of city recorder and city treasurer, thereby authorizing one (1) person to hold this position.

(b) When combined, the office shall be known as "recorder-treasurer" for the city.

History. Acts 1949, No. 42, § 1; A.S.A. 1947, § 19-1103.1.

14-44-115. Election of recorder or recorder-treasurer.

The qualified voters of cities of the second class shall, on the Tuesday following the first Monday in November 1972, and every four (4) years thereafter, elect a recorder or a recorder-treasurer, as the case may be, for a term of four (4) years.

History. Acts 1969, No. 272, § 1; A.S.A. 1947, § 19-1103.3.

14-44-116. Vacancy in recorder's office.

Whenever a vacancy shall occur in the office of recorder in any city of the second class, at the first regular meeting after the occurrence of the vacancy, the city council shall proceed to elect, by a majority vote of all the aldermen, a recorder to serve for the unexpired term.

History. Acts 1921, No. 450, § 1; Pope's Dig., § 9811; A.S.A. 1947, § 19-1112.

CASE NOTES

Election.

Where recorder received a majority vote when selected, the fact that there was no formal motion and second did not render his election illegal, as a motion and a

second are not required for a valid city council vote. *O'Brien v. City of Greers Ferry*, 293 Ark. 19, 732 S.W.2d 146 (1987).

Cited: *Thomas v. Sitton*, 213 Ark. 816, 212 S.W.2d 710 (1948).

14-44-117. City collectors.

(a) Every city of the second class within the State of Arkansas is empowered to elect a city collector at the time of the election of other officers of these cities.

(b)(1) The collector's duties shall be to collect all fines, licenses, taxes, and all other revenues due the municipality, except taxes now collected by the sheriff and collector of a county as provided by law.

(2) The collector shall also collect all taxes or benefits for any and all improvement districts or other agencies of government within the municipality.

(c)(1)(A) The city council shall fix the amount and require a good and sufficient surety bond of that collector to protect the municipality in the safe handling and accounting to the city for all municipal funds which shall come into his hands.

(B) The council shall require the bond to be filed with the city recorder and made a permanent record after the bond has been recorded in the office of the circuit clerk of the county in which the municipality is located, as may be otherwise required by law.

(2) For the safekeeping and the proper accounting of all funds collected by the collector for any and all improvement districts, that collector shall make and file a good and sufficient surety bond with each board of commissioners of any such district, as may be required by law.

(3)(A) For any and all of the surety bonds required in this subsection of the collector, they may be made by any solvent surety company authorized to do business in the State of Arkansas.

(B) The premiums for these bonds shall be paid by the municipality or the improvement district as each is affected.

(d)(1) The city council shall fix the salary to be paid to the collector for his services.

(2) If it is deemed to be in the best interests of the municipality or any improvement district affected, the council may provide that the collector may receive, in lieu of a fixed salary, fees as may be fixed by the council, or as otherwise provided by law.

(e)(1) The council of any city in this state electing to exercise the rights conferred in this section may provide, by ordinance, for the applicability of this section.

(2) All boards of commissioners of any and all improvement districts in these cities shall comply with the intent and purpose of this section, and any commissioner failing to so comply may be removed from office by the council.

History. Acts 1929, No. 251, §§ 1-5; Pope's Dig., §§ 9804-9808; A.S.A. 1947, §§ 19-1105 — 19-1109.

Cross References. Appointment of city improvement collector, § 14-88-405.

Fines collected for violation of city ordinance paid to collector, § 16-96-403.

Self-Insured Fidelity Bond Program, § 21-2-701 et seq.

CHAPTER 45

GOVERNMENT OF INCORPORATED TOWNS

SECTION.

14-45-101. Corporate authority.

14-45-102. Election of aldermen.

14-45-103. Vacancies.

14-45-104. Election of mayor.

SECTION.

14-45-105. Powers of mayor generally.

14-45-106. Mayor and city court.

14-45-107. Presiding officer of council — Clerk.

SECTION.

14-45-108. Election of recorder-treasurer.

14-45-109. Appointment of marshal and other officers.

SECTION.

14-45-110. Residency of marshals.

14-45-111. Powers and duties of marshals.

Cross References. Firemen's relief and pension fund board, ex officio officers, § 24-11-801.

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

Acts 1883, No. 106, § 3: effective on passage.

Acts 1989, No. 386, § 4: Mar. 7, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that there exists no provision in

the law which provides for the filling of vacancies in elective offices of incorporated towns; that the failure to have such a provision has resulted in undue hardship on many of the citizens of this state; therefore, an emergency is hereby declared to exist and this act being necessary for the protection of the public peace, health and safety shall take effect immediately on its passage and approval."

RESEARCH REFERENCES

C.J.S. 87 C.J.S., Towns, §§ 34-89.

14-45-101. Corporate authority.

(a) The corporate authority of incorporated towns shall vest in a town council composed of the five (5) aldermen who shall be qualified electors residing within the limits of the corporation and who shall hold office until their successors are elected and qualified.

(b) A majority of the whole number of aldermen shall constitute a quorum for the transaction of business.

History. Acts 1875, No. 1, § 41, p. 1; C. 483, § 1; 1981, No. 343, § 1; A.S.A. 1947, & M. Dig., § 7671; Acts 1937, No. 259, § 19-1201.
§ 2; Pope's Dig., § 9793; Acts 1965, No.

CASE NOTES

Cited: Lee v. Watts, 243 Ark. 957, 423 S.W.2d 557 (1968).

14-45-102. Election of aldermen.

The qualified voters of incorporated towns shall, on the Tuesday following the first Monday in November 1982, and every two (2) years thereafter, elect five (5) aldermen.

History. Acts 1875, No. 1, § 41, p. 1; C. & M. Dig., § 7671; Acts 1937, No. 259, § 2; Pope's Dig., § 9793; Acts 1965, No. 483, § 1; 1981, No. 343, § 1; A.S.A. 1947, § 19-1201.

Publisher's Notes. Acts 1965, No. 483, § 2, provided that the purpose of this act

is to provide that the time for election of the officials of incorporated towns shall be at the regular general election for the election of state and county officials and to abolish the odd year election for the election of officials of incorporated towns.

CASE NOTES

Cited: Lee v. Watts, 243 Ark. 957, 423 S.W.2d 557 (1968).

14-45-103. Vacancies.

The town council shall have power to fill vacancies which may occur in elective offices of the town or on the council from qualified electors of the town, who shall hold their appointments until the next biennial election and until their successors are elected and qualified.

History. Acts 1875, No. 1, § 43, p. 1; C. § 3; Pope's Dig., § 9796; A.S.A. 1947, & M. Dig., § 7674; Acts 1937, No. 259, § 19-1206; Acts 1989, No. 386, § 1.

CASE NOTES

Cited: Langston v. Johnson, 255 Ark. 933, 504 S.W.2d 349 (1974).

14-45-104. Election of mayor.

The qualified electors in incorporated towns shall, on the Tuesday following the first Monday in November 1966, and every four (4) years thereafter, elect a mayor for a term of four (4) years.

History. Acts 1965, No. 554, § 1; A.S.A. 1947, § 19-1201.1.

CASE NOTES

Cited: Langston v. Johnson, 255 Ark. 933, 504 S.W.2d 349 (1974).

14-45-105. Powers of mayor generally.

(a) The mayor in incorporated towns shall be ex officio president of the town council, shall preside at its meetings, and shall have a vote when the mayor's vote is needed to pass any ordinance, bylaw, resolution, order, or motion.

(b)(1) The mayor in these towns shall have the power to veto, within five (5) days, Sundays excepted, after the action of the council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his judgment is contrary to the public interest.

(2)(A) In case of a veto, the mayor shall, before the next regular meeting of the council, file a written statement of his reasons for the veto in the office of the town recorder-treasurer, to be laid before the meeting.

(B) No ordinance, resolution, or order, or part thereof, vetoed by the mayor shall have any force or validity unless, after the written statement is laid before it, the council shall, by a vote of two-thirds ($\frac{2}{3}$) of all the aldermen elected thereto, pass it over the veto.

History. Acts 1875, No. 1, § 41, p. 1; C. Acts 1981, No. 343, § 1; A.S.A. 1947, & M. Dig., § 7671; Pope's Dig., § 9793; § 19-1201.

CASE NOTES

Cited: Lee v. Watts, 243 Ark. 957, 423 S.W.2d 557 (1968).

14-45-106. Mayor and city court.

(a) The mayor of an incorporated town shall be a conservator of the peace throughout its limits and shall have, within the town, all power and jurisdiction of a justice of the peace in all civil or criminal matters arising under the laws of the state, to all intents and purposes whatever. For crimes and offenses committed within the limits of the town, the mayor's jurisdiction shall be coextensive with the county.

(b) Any mayor may designate, at such times as he shall choose to do so, any attorney regularly licensed to practice law and a resident of the county in which the city or town is located, to sit in the mayor's stead as judge of the city court. All fines and penalties assessed by the court in such a case shall continue to be paid into the city or town treasury. The attorney sitting in the stead of the mayor shall charge and collect the same fees as justices of the peace are allowed for similar service.

(c) The mayor shall give bond and security in any amount to be ascertained and approved by the town council.

(d) The mayor shall:

(1) Perform all duties required of him by the ordinances of the town, and appeals may be taken in the same manner as from decisions of justices of the peace; and

(2)(A) Keep a docket and charge and collect the same fees as justices of the peace are allowed for similar services.

(B)(i) In addition for his services as mayor, the council may, by ordinance, make proper allowance for, and payment of, compensation.

(ii) Clay, Craighead, Greene, Ashley, and Chicot counties shall be exempted from the provisions of this section.

History. Acts 1875, No. 1, § 45, p. 1; C. & M. Dig., § 7676; Acts 1921, No. 368, § 1; Pope's Dig., § 9798; Acts 1941, No. 284, § 1; A.S.A. 1947, § 19-1204; Acts 1995, No. 298, § 2.

Amendments. The 1995 amendment substituted "any attorney regularly licensed to practice law and a resident of the county in which the city or town is located" for "any duly elected and qualified justice of the peace in the township" and "judge" for "justice" in the first sentence of (b); divided the former last sentence of (b)

into two sentences; substituted "court in such a case" for "city court in that case" and inserted "city or town" in the present second sentence of (b); and substituted "attorney" for "justice" in the present last sentence of (b).

Cross References. No jury trial in city court, § 16-96-112.

Recorder authorized to perform mayor's duties if mayor unable to perform duties, § 14-42-111.

Self-Insured Fidelity Bond Program, § 21-2-701 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Arkansas' Judiciary: Its History and Structure, 18 Ark. L. Rev. 152.

CASE NOTES

ANALYSIS

Applicability.
Counsel.
Fines and penalties.
Jurisdiction.
Pleadings.
Sitting as court.

Applicability.

Provision exempting five counties from provisions of this section governing mayor's court in incorporated towns does not apply to § 14-44-108 governing mayor's court in second-class cities. *City of Mt. Home v. Ray*, 223 Ark. 553, 267 S.W.2d 503 (1954).

Counsel.

An indigent misdemeanor defendant in a mayor's court was not deprived of his constitutional rights by failure to assign counsel to him where, upon appeal to the circuit court, the cause was tried de novo and he was represented by counsel. *Cableton v. State*, 243 Ark. 351, 420 S.W.2d 534 (1967).

Fines and Penalties.

A town is entitled to retain all the fines and penalties imposed by the mayor's court for violation of its ordinances, notwithstanding the ordinances make the same acts offenses as are made offenses against the state by statute and the county is entitled only to such fines and penalties as are imposed by the mayors of these courts, acting in their capacity of justices of the peace for violation of the state laws within their jurisdiction. *Incorporated Town of Pocahontas v. State ex rel. Randolph County*, 114 Ark. 448, 170 S.W. 89 (1914).

Jurisdiction.

The mayor of an incorporated town has no authority to fine for contempt the editor of a newspaper whose editorial page criticized the mayor's policies. *Ex parte Patterson*, 110 Ark. 94, 161 S.W. 173 (1913).

Affidavit setting forth charge of resisting an officer was held sufficient to give the mayor jurisdiction of the offense. *Robinson v. City of Malvern*, 118 Ark. 423, 176 S.W. 675 (1915).

Claims for damages from torts in excess of \$100 arising out of the same transaction and constituting but one course of action were held not within the jurisdiction of the mayor's court or the circuit court on appeal therefrom. *Hively v. Jones*, 178 Ark. 1127, 13 S.W.2d 612 (1929).

Pleadings.

Trial before mayor was not required to be styled in name of state when no ordinance covered subject matter. *Harris v. City of Harrison*, 211 Ark. 889, 204 S.W.2d 16204 sw2d 5547 (1947).

Sitting as Court.

A mayor's court can sit only inside the municipal limits, though it has powers of process throughout the county. *Lee v. Watts*, 243 Ark. 957, 423 S.W.2d 557 (1968).

A justice of the peace sitting as justice of the mayor's court of a town must do so within the corporate limits of that town. *Lee v. Watts*, 243 Ark. 957, 423 S.W.2d 557 (1968).

Cited: *Cableton v. State*, 243 Ark. 351, 420 S.W.2d 534 (1967); *Gore v. Emerson*, 262 Ark. 463, 557 S.W.2d 880 (1977).

14-45-107. Presiding officer of council — Clerk.

(a) The mayor or, in case of his absence, the recorder-treasurer shall preside at all meetings of the town council. The recorder-treasurer shall also be, and act as, clerk of the town. He shall attend all meetings of the council and make a fair, accurate, and correct record of all the proceedings, laws, rules, and ordinances made and passed by the council. The records shall, at all times, be open for the inspection of the electors of the town.

(b) In the absence of the mayor and recorder-treasurer from any meeting of the council, the council shall have power to appoint any two (2) of their number to perform the duties of mayor and recorder-treasurer for the time being.

History. Acts 1875, No. 1, §§ 42, 43, p. No. 259, § 3; Pope's Dig., §§ 9794, 9796; 1; C. & M. Dig., §§ 7672, 7674; Acts 1937, A.S.A. 1947, §§ 19-1203, 19-1206.

CASE NOTES

Cited: Blake v. Trout, 127 Ark. 299, 192 S.W. 179 (1917); Langston v. Johnson, 255 Ark. 933, 504 S.W.2d 349 (1974).

14-45-108. Election of recorder-treasurer.

The qualified voters of incorporated towns shall, on the Tuesday following the first Monday in November 1982, and every two (2) years thereafter, elect one (1) recorder-treasurer.

History. Acts 1875, No. 1, § 41, p. 1; C. & M. Dig., § 7671; Acts 1937, No. 259, § 2; Pope's Dig., § 9793; Acts 1965, No. 483, § 1; 1981, No. 343, § 1; A.S.A. 1947, § 19-1201.

Publisher's Notes. Acts 1965, No. 483, § 2, provided that the purpose of this act

is to provide that the time for election of the officials of incorporated towns shall be at the regular general election for the election of state and county officials and to abolish the odd year election for the election of officials of incorporated towns.

CASE NOTES

Cited: Lee v. Watts, 243 Ark. 957, 423 S.W.2d 557 (1968).

14-45-109. Appointment of marshal and other officers.

(a) The council of any incorporated town shall have power to provide, by ordinance, for the election of a town marshal and such other subordinate officers as they may think necessary for the good government of the town.

(b) In regard to the officers mentioned in subsection (a) of this section, the council shall have the power to:

(1) Prescribe their duties and compensation or the fees they shall be entitled to receive for their services; and

(2) Require of them an oath of office and bond with surety for the faithful discharge of their duty.

(c) The period for the election of any officer shall be fixed at the time of the regular biennial election. No appointment of any officer shall endure beyond the period of the term of office of the council making the appointment and one (1) week after the qualification of the members of the succeeding council.

History. Acts 1875, No. 1, § 44, p. 1; C. & M. Dig., § 7675; Acts 1937, No. 259, § 4; Pope's Dig., § 9797; A.S.A. 1947, § 19-1202.

Cross References. Removal of town marshal by mayor, § 14-42-110. Self-Insured Fidelity Bond Programs, § 21-2-701 et seq.

CASE NOTES

Cited: Langston v. Johnson, 255 Ark. 933, 504 S.W.2d 349 (1974); Clark v. Mahan, 268 Ark. 37, 594 S.W.2d 7 (1980).

14-45-110. Residency of marshals.

Incorporated towns shall have the authority to require their appointed marshals to reside within their corporate limits, and they shall have the authority to permit their appointed marshals to reside outside their corporate limits.

History. Acts 1979, No. 10, § 1; A.S.A. 1947, § 19-1103.4.

14-45-111. Powers and duties of marshals.

(a) The town marshal of incorporated towns shall be the principal ministerial officer of the town. He shall have the same power that sheriffs have by law, and his jurisdiction shall be coextensive with the county for offenses committed within the limits of the town.

(b) The town marshal shall execute the process of the mayor and collect the same fees for his services that sheriffs are allowed in similar cases.

(c) It shall be the duty of the town marshal to:

(1) Suppress all riots and disturbances and breaches of the peace;

(2) Apprehend all disorderly persons in the town;

(3) Pursue and arrest any person fleeing from justice in any part of the state; and

(4) Apprehend any person in the act of committing any offense against the laws of the state or ordinances of the town and immediately bring the person before the mayor, or other competent authority, for examination or trial.

(d) The town marshal shall have power to appoint one (1) or more deputies, for whose official acts he shall be responsible.

(e) All persons or parties arrested by any officer of the state for violation of any town ordinance shall be turned over to the town

marshal and shall be by him taken before the proper authorities for investigation.

History. Acts 1875, No. 1, § 46, p. 1; § 7677; Pope's Dig., § 9799; A.S.A. 1947, 1883, No. 106, § 2, p. 189; C. & M. Dig., § 19-1205.

CASE NOTES

In General.

A town marshal is a public officer and has broad and numerous duties and re-

sponsibilities. Thomas v. Sitton, 213 Ark. 816, 212 S.W.2d 710 (1948).

CHAPTER 46

COMMISSION FORM OF MUNICIPAL GOVERNMENT

SUBCHAPTER.

1. GENERAL PROVISIONS. [REPEALED.]
2. BOARDS OF THREE COMMISSIONERS. [REPEALED.]
3. BOARDS OF FIVE COMMISSIONERS. [REPEALED.]

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

14-46-101, 14-46-102. [Repealed.]

14-46-101, 14-46-102. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1991, No. 49, § 3. The subchapter was derived from the following sources:

14-46-101. Acts 1965, No. 162, §§ 1-3; A.S.A. 1947, §§ 19-642—19-644.

14-46-102. Acts 1957, No. 384, § 1; A.S.A. 1947, § 19-641.

SUBCHAPTER 2 — BOARDS OF THREE COMMISSIONERS

SECTION.

14-46-201 — 14-46-249. [Repealed.]

14-46-201 — 14-46-249. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1991, No. 49, § 3. The subchapter was derived from the following sources:

14-46-201. Acts 1913, No. 13, § 1; 1949, No. 25, § 1; A.S.A. 1947, § 19-601.

14-46-202. Acts 1913, No. 13, § 25; A.S.A. 1947, § 19-626.

14-46-203. Acts 1913, No. 13, § 3; A.S.A. 1947, § 19-603.

14-46-204. Acts 1913, No. 13, § 2; A.S.A. 1947, § 19-602.

14-46-205. Acts 1913, No. 13, § 28; A.S.A. 1947, § 19-629.

14-46-206. Acts 1965, No. 3, §§ 1, 2; A.S.A. 1947, §§ 19-604.2, 19-604.3.

14-46-207. Acts 1913, No. 13, § 26; A.S.A. 1947, § 19-627.

14-46-208. Acts 1913, No. 13, § 27; A.S.A. 1947, § 19-628.

14-46-209. Acts 1913, No. 13, §§ 6, 7; A.S.A. 1947, §§ 19-606, 19-607.

14-46-210. Acts 1913, No. 13, § 18; A.S.A. 1947, § 19-608.

14-46-211. Acts 1913, No. 13, § 5; 1949, No. 219, § 1; A.S.A. 1947, § 19-605.

14-46-212. Acts 1913, No. 13, § 5; 1949, No. 219, § 1; A.S.A. 1947, § 19-605.

- 14-46-213. Acts 1913, No. 13, § 5; 1949, No. 219, § 1; A.S.A. 1947, § 19-605.
- 14-46-214. Acts 1913, No. 13, § 5; 1949, No. 219, § 1; A.S.A. 1947, § 19-605.
- 14-46-215. Acts 1913, No. 13, § 5; 1949, No. 219, § 1; A.S.A. 1947, § 19-605.
- 14-46-216. Acts 1913, No. 13, § 5; 1949, No. 219, § 1; A.S.A. 1947, § 19-605.
- 14-46-217. Acts 1913, No. 13, § 5; 1949, No. 219, § 1; A.S.A. 1947, § 19-605.
- 14-46-218. Acts 1913, No. 13, § 5; 1949, No. 219, § 1; A.S.A. 1947, § 19-605.
- 14-46-219. Acts 1913, No. 13, § 5; 1949, No. 219, § 1; A.S.A. 1947, § 19-605.
- 14-46-220. Acts 1913, No. 13, § 5; 1949, No. 219, § 1; A.S.A. 1947, § 19-605.
- 14-46-221. Acts 1913, No. 13, § 5; 1949, No. 219, § 1; A.S.A. 1947, § 19-605.
- 14-46-222. Acts 1913, No. 13, § 5; 1949, No. 219, § 1; A.S.A. 1947, § 19-605.
- 14-46-223. Acts 1965, No. 97, § 1; A.S.A. 1947, § 19-605.1
- 14-46-224. Acts 1913, No. 13, § 4; 1917, No. 3, § 1, p. 16; A.S.A. 1947, § 19-604.
- 14-46-225. Acts 1965, No. 97, § 2; A.S.A. 1947, § 19-604.1.
- 14-46-226. Acts 1913, No. 13, § 9; 1917, No. 3, § 3, p. 16; 1957, No. 377, § 1; A.S.A. 1947, § 19-609.
- 14-46-227. Acts 1913, No. 13, § 10; A.S.A. 1947, § 19-610.
- 14-46-228. Acts 1913, No. 13, § 21; A.S.A. 1947, § 19-621.
- 14-46-229. Acts 1913, No. 13, § 20; A.S.A. 1947, § 19-620.
- 14-46-230. Acts 1913, No. 13, § 9; 1957, No. 377, § 1; A.S.A. 1947, § 19-609.
- 14-46-231. Acts 1913, No. 13, § 19; A.S.A. 1947, § 19-619.
- 14-46-232. Acts 1913, No. 13, § 11; A.S.A. 1947, § 19-611.
- 14-46-233. Acts 1953, No. 271, § 1; A.S.A. 1947, § 19-611.1.
- 14-46-234. Acts 1913, No. 13, § 12; 1923 (1st Ex. Sess.), No. 14, § 1; 1943, No. 279, § 1; 1949, No. 92, § 1; 1953, No. 72, § 1; A.S.A. 1947, § 19-612.
- 14-46-235. Acts 1913, No. 13, § 11; A.S.A. 1947, § 19-611.
- 14-46-236. Acts 1913, No. 13, § 11; A.S.A. 1947, § 19-611.
- 14-46-237. Acts 1913, No. 13, § 15; A.S.A. 1947, § 19-616.
- 14-46-238. Acts 1913, No. 13, § 17; 1927, No. 12, § 1; A.S.A. 1947, § 19-618.
- 14-46-239. Acts 1913, No. 13, § 13; A.S.A. 1947, § 19-613.
- 14-46-240. Acts 1913, No. 13, § 13; A.S.A. 1947, § 19-613.
- 14-46-241. Acts 1913, No. 13, § 8; 1917, No. 3, § 2, p. 16; A.S.A. 1947, § 19-614.
- 14-46-242. Acts 1913, No. 13, § 16; A.S.A. 1947, § 19-617.
- 14-46-243. Acts 1949, No. 475, §§ 1, 2; A.S.A. 1947, §§ 19-633, 19-634.
- 14-46-244. Acts 1913, No. 13, § 14; A.S.A. 1947, § 19-615.
- 14-46-245. Acts 1913, No. 13, § 22; 1917, No. 3, § 4, p. 16; A.S.A. 1947, § 19-622.
- 14-46-246. Acts 1913, No. 13, § 30; A.S.A. 1947, § 19-623.
- 14-46-247. Acts 1913, No. 13, § 23; 1935, No. 156, § 1; 1963, No. 523, § 1, A.S.A. 1947, § 19-624.
- 14-46-248. Acts 1913, No. 13, § 24; A.S.A. 1947, § 19-625.
- 14-46-249. Acts 1949, No. 49, §§ 1, 2; A.S.A. 1947, §§ 19-635, 19-636.

SUBCHAPTER 3 — BOARDS OF FIVE COMMISSIONERS

SECTION.

14-46-301 — 14-46-310. [Repealed.]

14-46-301 — 14-46-310. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1991, No. 49, § 3. The subchapter was derived from the following sources:

- 14-46-301. Acts 1971, No. 436, § 9; A.S.A. 1947, § 19-601.9.
- 14-46-302. Acts 1971, No. 436, § 1; A.S.A. 1947, § 19-601.1.
- 14-46-303. Acts 1971, No. 436, § 7; A.S.A. 1947, § 19-601.7.
- 14-46-304. Acts 1971, No. 436, § 8; A.S.A. 1947, § 19-601.8.
- 14-46-305. Acts 1971, No. 436, § 10; A.S.A. 1947, § 19-601.10.
- 14-46-306. Acts 1971, No. 436, § 2; A.S.A. 1947, § 19-601.2.

14-46-307. Acts 1971, No. 436, § 3;
A.S.A. 1947, § 19-601.3.
14-46-308. Acts 1971, No. 436, § 4;
A.S.A. 1947, § 19-601.4.

14-46-309. Acts 1971, No. 436, § 5;
A.S.A. 1947, § 19-601.5.
14-46-310. Acts 1971, No. 436, § 6;
A.S.A. 1947, § 19-601.6.

CHAPTER 47

CITY MANAGER FORM OF MUNICIPAL GOVERNMENT

SECTION.

14-47-101. Applicability generally
14-47-102. Applicability of 1957 amendments.
14-47-103. Savings provisions.
14-47-104. Penalties for election violations.
14-47-105. Forms of government.
14-47-106. Election on city manager form of government.
14-47-107. Subsequent election on aldermanic form of government.
14-47-108. Effect of reorganization.
14-47-109. Board of directors generally.
14-47-110. Election of directors.
14-47-111. Refusal of director to serve.
14-47-112. Removal of director.
14-47-113. Director vacancy.
14-47-114. Director not compensated — Per diem.
14-47-115. Prohibition against director interest in contracts.
14-47-116. Mayor.
14-47-117. Assistant mayor.
14-47-118. Acting mayor.
14-47-119. Employment of city manager.
14-47-120. Powers and duties of city manager.

SECTION.

14-47-121. Acting city manager.
14-47-122. Police court.
14-47-123. Meetings of board of directors.
14-47-124. Initiative and referendum.
14-47-125. Budget and appropriations.
14-47-126. Annual audit.
14-47-127. Civil service plans.
14-47-128. Deferred compensation agreements.
14-47-129. Dependents of killed police officer or fire fighter.
14-47-130. Public health jurisdiction.
14-47-131. Creation of new departments, etc.
14-47-132. Vacancy on municipal board, etc.
14-47-133. Appointees generally.
14-47-134. Qualifications of appointees.
14-47-135. Relations barred from employment.
14-47-136. Bond of officers and employees.
14-47-137. Prohibited actions by officers or employees.
14-47-138. Competitive bidding required.
14-47-139. Public utility franchises, etc.

Cross References. City manager enabling provisions, § 14-61-101 et seq.

Election of city officials, §§ 14-42-201 et seq., 14-42-301 et seq.

Government of cities of the first class generally, § 14-43-201 et seq.

Government of cities of the second class generally, § 14-44-101 et seq.

Preambles. Acts 1947, No. 403 contained a preamble which read: "Whereas, some of the provisions of Act 99 of the Acts of the General Assembly of the State of Arkansas for the year 1921 are cumbersome and involved, so that it is desirable to simplify the act and make it available for any city in the state coming within its classification that may desire to avail itself of the provisions of the act;

"Now, therefore..."

Effective Dates. Acts 1921, No. 99, § 35: approved Feb. 10, 1921. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, shall be in force and effect and take effect from and after its passage."

Acts 1947, No. 403, § 6: approved Mar. 28, 1947. Emergency clause provided: "It is hereby ascertained and declared that there is need in some of the cities of the state for the adoption of a city manager form of government, in order to promote the health and safety of the inhabitants thereof, and therefore an emergency exists and this act, being necessary for the immediate preservation of the public

peace, health and safety, shall take effect and be in force from and after its passage.”

Acts 1957, No. 8, § 24: Feb. 1, 1957. Emergency clause provided: “It has been found, and is hereby declared that the management form of city government authorized under this Act provides an improved and superior method for the administration and government of cities of the first and second class; that many Arkansas cities would be greatly benefited by immediately changing from the aldermanic to the management form of government but that Act No. 99 of 1921 (and the prior amendments thereto) contained defective provisions, cured by the amendments contained in this Act, which grossly impaired the efficiency and desirability of the management plan of reorganization and constituted a deterrent to such municipal reorganizations; that the passage of this Act will make available to cities of the first and second class whose present government is inadequate or inefficient an opportunity to reorganize hereunder and thereby greatly improve the efficiency and economy of their respective municipal governments. Therefore, an emergency is hereby declared to exist and, this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after the date of its passage and approval.”

Acts 1957, No. 226, § 2: effective on passage.

Acts 1965, No. 6, § 3: Jan. 26, 1965. Emergency clause provided: “It is hereby found and determined by the General Assembly that the designation of Monday, as the only day on which the Board of Directors of cities adopting the manager form of governments may meet is unduly restrictive; that the efficiency of the manager form of government will be improved by permitting the boards of the respective cities to choose the day of the week on which to meet; and, that the immediate passage and effectiveness of this Act is necessary to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval.”

Acts 1967, No. 165, § 2: Feb. 28, 1967. Emergency clause provided: “It has been found and is declared by the General Assembly of the State of Arkansas that

the Arkansas Arts Center exists for the benefit of and should be supported by the entire State of Arkansas; that in order to obtain greater support for and participation in the activities of the Arkansas Arts Center that the Board of Trustees of the Arkansas Arts Center should be more representative of the entire State; and that enactment of this bill will accomplish these purposes and aims. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after the date of its approval.”

Acts 1967, No. 188, § 3: Feb. 28, 1967. Emergency clause provided: “It is hereby found and determined by the General Assembly that this Act is immediately necessary to eliminate the expense of certain special elections and to provide a satisfactory and permanent method of filling a vacancy in the office of a Director in cities having the management form of government. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1971, No. 74, § 5: Feb. 12, 1971. Emergency clause provided: “It is hereby found and determined by the General Assembly that under the present laws of this State, many municipal boards and commissions are self perpetuating in that vacancies on such boards and commissions are to be filled by a vote of the remaining members of the boards and commissions; that it is in the best interests of the citizens of this State that vacancies on municipal boards and commissions in cities having a manager form of government be filled by a majority vote of the board of directors of the city rather than the remaining members of the affected board or commission; that this Act is designed to correct this situation and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1975, No. 874, § 5: approved Apr. 4, 1975. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas

that certain officials and employees of municipal governments operated under management form are unable to acquire retirement security under existing and available retirement plans and it is necessary that such cities be able to assure reasonable retirement security to certain officials and employees to attract competent personnel to its services and that this Act is immediately necessary to retain competent key officials and employees of the cities; therefore, an emergency is declared to exist and this Act being necessary for the preservation of public peace, health and safety shall be in full force and effect from and after its passage."

Acts 1987, No. 25, § 3: Feb. 11, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the city manager residency requirement of Act 99 of 1921 puts cities with less than six thousand (6,000) persons in population at a serious disadvantage when competing with larger cities for the services of professional city managers and that allowing these cities the option to

eliminate the residency requirement will reverse this inequity. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the safe and efficient operation of the cities of the State shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 117, § 5: Feb. 15, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present city manager law which prohibits a person related to a member of the board of directors or the city manager from holding a position of employment or appointment with the city is unreasonably strict; that this act modifies that provision to make it more reasonable; and that until this act goes into effect, unreasonable discrimination will continue as a result of the current law. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., § 181 et seq.

CASE NOTES

Cited: Williams v. City of Texarkana, 861 F. Supp. 756 (W.D. Ark. 1992), supp. op., 861 F. Supp. 771 (W.D. Ark. 1993), aff'd, 32 F.3d 1265 (8th Cir. 1994).

14-47-101. Applicability generally.

Any city within the State of Arkansas having a population of two thousand five hundred (2,500) or more, according to the latest federal census, may become organized under the provisions of this chapter by proceeding as provided in this chapter.

History. Acts 1921, No. 99, § 1; 1931, No. 226, § 1; Pope's Dig., § 10089; Acts 1957, No. 8, § 1; A.S.A. 1947, § 19-701.

CASE NOTES

Cited: Williams v. Pulaski County Election Comm'n, 249 Ark. 309, 459 S.W.2d 52 (1970); Moorman v. Priest, 310 Ark. 525, 837 S.W.2d 886 (1992).

14-47-102. Applicability of 1957 amendments.

Acts 1957, No. 8, amending §§ 14-47-101 — 14-47-103, 14-47-105, 14-47-106 — 14-47-111, 14-47-114 — 14-47-121, 14-47-123 — 14-47-127, 14-47-131, 14-47-133, 14-47-134, and 14-47-136 — 14-47-139, shall be applicable to:

(1) All cities of the first and second class hereafter electing to reorganize under this chapter, as heretofore amended and as amended in this legislation; and

(2) All cities of the first and second class that have not yet consummated a reorganization into the management form of government but whose electors, prior to the enactment of this legislation, may have voted through an election held pursuant to § 14-47-106 to reorganize the city under this chapter.

History. Acts 1957, No. 8, § 22; A.S.A. 1947, § 19-732.

CASE NOTES

ANALYSIS

In general.

Effect.

Validity.

In General.

The fact that Little Rock may be the only city at the present time coming within the category mentioned in subdivision (2) does not make Acts 1957, No. 8 local legislation. *Mann v. Lowry*, 227 Ark. 1132, 303 S.W.2d 889 (1957).

Effect.

Acts 1957, No. 8 did not repeal the provision of Acts 1951, No. 49 relating to the election of municipal court judges in the city of Little Rock at the general municipal election. *Laster v. Pruniski*, 228 Ark. 132, 306 S.W.2d 123 (1957).

Validity.

The emergency clause of Acts 1957, No. 8 was valid. *Mann v. Lowry*, 227 Ark. 1132, 303 S.W.2d 889 (1957).

14-47-103. Savings provisions.

(a) When a city effects a change of government under this chapter, it shall remain subject to and controlled by all laws, except those inconsistent with this chapter, which on the effective date of the reorganization applied to or governed the city including, without limiting the foregoing, laws relating to improvement districts or providing for the creation thereof.

(b) All bylaws, ordinances, and resolutions lawfully passed and in force in any city under its former organization, and not in conflict with this chapter, shall remain in force until altered or repealed by the board of directors elected under the authority of this chapter.

(c) The territorial limits of the city shall remain the same as under its former organization, and all rights and property of every description which were vested in the city under its former organization shall remain vested in it under the reorganization provided for in this chapter.

(d) No existing right or liability either in favor of or against the city or any agency thereof including, without limiting the foregoing, im-

provement districts and no suit or prosecution of any kind shall be affected by the change unless otherwise provided for in this chapter.

(e) No valid pledge or mortgage of the revenues or property of the city, or of any agency or instrumentality thereof, or of any municipal improvement district, shall be impaired by the reorganization.

History. Acts 1921, No. 99, § 3; Pope's Dig., § 10091; Acts 1957, No. 8, § 3; A.S.A. 1947, § 19-703.

14-47-104. Penalties for election violations.

(a) Any person who shall perform any service in the interest of any candidate for any office provided in this chapter in consideration of any money, promise of employment, or other valuable thing or any candidate who shall pay or make promises to pay such consideration shall be guilty of a misdemeanor. Upon conviction by any court of competent jurisdiction, an offender shall be punished by a fine not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300) or by imprisonment in the county jail not exceeding thirty (30) days, or both.

(b) Any person offering a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at any election provided in this chapter or any elector entitled to vote at any election receiving or accepting any bribe or other consideration, any person making a false answer relative to his qualification to vote at the election, any person voting or offering to vote at the election, knowing he is not entitled to vote at the election, and any person knowingly procuring, aiding, or abetting in violation of this section shall be deemed guilty of a misdemeanor. Upon conviction, an offender shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or be imprisoned in the county jail not less than ten (10) days nor more than ninety (90) days, or both.

History. Acts 1921, No. 99, §§ 6, 7; Pope's Dig., §§ 10094, 10095; A.S.A. 1947, §§ 19-706, 19-707.

14-47-105. Forms of government.

(a) The form of government created by an organization under this chapter is called the management form of city government.

(b) The form of government of a municipality operating under the control of a municipal council, pursuant to either § 14-43-201 et seq. or § 14-44-101 et seq., is called the aldermanic form of government.

History. Acts 1921, No. 99, § 1; 1931, No. 226, § 1; Pope's Dig., § 10089; Acts 1957, No. 8, § 1; A.S.A. 1947, § 19-701.

CASE NOTES

Cited: Williams v. Pulaski County Election Comm'n, 249 Ark. 309, 459 S.W.2d 52 (1970).

14-47-106. Election on city manager form of government.

(a) Any city in this state having a population of two thousand five hundred (2,500) or more according to the most recent federal census may call and hold an election to determine whether or not the city shall be organized under and governed by the manager form of city government as provided for in this chapter.

(b) The proceeding shall be in the following manner:

(1)(A)(i) When petitions therefor containing the signatures of electors equal in number to fifteen percent (15%) of the aggregate number of ballots cast for all candidates for mayor in the preceding general city election shall be presented to the mayor, the mayor shall, by proclamation, submit the question of organizing the city under the manager form of government to the electors of the city at a special election to be held not less than thirty (30) days after the date of the proclamation.

(ii) The proclamation shall be published at length in some newspaper published in the city for one (1) time, and notice of the election shall be published in some newspaper published in the city once a week for two (2) weeks, the first publication to be not less than fifteen (15) days before the date set for the election. No other notice of the election shall be necessary.

(B) At the special election for the submission or resubmission of the proposition, the ballots shall contain substantially the following: "FOR the proposition to organize this city under Act 99 of the

General Assembly of 1921, as amended ☐ AGAINST the proposition to organize this city under Act 99 of the

General Assembly of 1921, as amended ☐

(2)(A) The election thereon shall be conducted, the vote canvassed, and the result thereof declared in the same manner as provided by law in respect to other city elections.

(B)(i) The county board of election commissioners shall certify the result to the mayor.

(ii) This result shall be conclusive and not subject to attack unless suit is brought in the circuit court of the county in which the city is situated to contest the certification within thirty (30) days after the certification;

(3)(A) If a majority of the votes cast on the proposition is against the organization of the city under this chapter, the question of adopting the manager form of government shall not be resubmitted to the voters of that city for adoption within four (4) years thereafter. It shall be resubmitted then only upon presentation to the mayor of petitions signed by electors equal in number to fifteen percent (15%)

of the aggregate number of ballots cast for all candidates for mayor at the preceding general city election.

(B)(i) If a majority of the votes cast on the proposition at any such election shall be for the organization of the city under this chapter, the mayor shall file certificates stating that the proposition was adopted with the Secretary of State and with the county clerk of the county in which the city is situated. The mayor shall call a special election to be held in the city for the purpose of electing seven (7) city directors.

(ii) This election shall be called and conducted and the results determined and certified as provided in § 14-47-110.

History. Acts 1921, No. 99, § 2; Pope's Dig., § 10090; Acts 1947, No. 403, § 1; 1957, No. 8, § 2; 1965, No. 157, § 1; A.S.A. 1947, § 19-702.

Publisher's Notes. Act 99 of the General Assembly of 1921, referred to in this section, is codified as § 14-47-101 et seq.

Acts 1965, No. 157, § 5, provided that it is the intent and purpose of this act to

make uniform the requirements for a city having the aldermanic form of government to submit to a vote the question of adopting the manager form of government and for a city having the manager form of government to submit to a vote the question of adopting the aldermanic form of government.

CASE NOTES

Approval.

The city manager form of government may be put into operation under this section as amended in 1957, even though the election at which the electors of the city

voted in favor of the city manager plan was prior to the time of the 1957 amendment. *Mann v. Lowry*, 227 Ark. 1132, 303 S.W.2d 889 (1957).

14-47-107. Subsequent election on aldermanic form of government.

(a)(1) After the expiration of six (6) years after the date on which the first board of directors takes office in a city organized under this chapter, a petition may be presented to the mayor. It shall be signed by electors equal in number to fifteen percent (15%) of the aggregate number of ballots cast for all candidates for director in that position for which the greatest number of ballots were cast in the preceding general election. Whereupon, the mayor shall, by proclamation, submit the question of organization of the city under the aldermanic form of government at a special election to be held at a time specified therein, not less than thirty (30) days after the date of the proclamation.

(2) The proclamation shall be published at length in some newspaper published in the city for one (1) time. Notice of the election shall be published in some newspaper published in the city once a week for two (2) weeks, the first publication to be not less than fifteen (15) days before the date set for the election. No other notice of the election shall be necessary.

(b) If the plan is not adopted by a majority of the voters voting upon that issue at the special election called, the question of adopting the aldermanic form of government shall not be resubmitted to the voters of

the city for adoption within four (4) years thereafter. Then the question to adopt shall be resubmitted upon the presentation to the mayor of a petition signed by electors equal in number to fifteen percent (15%) of the aggregate number of votes cast for all candidates for director in that position for which the greatest number of ballots were cast in the preceding general election.

(c) At the special election for the submission or resubmission of the proposition, the ballots shall read:

“FOR the proposition to organize this city under the aldermanic form of government ☐

AGAINST the proposition to organize this city under the aldermanic form of government ☐”

(d)(1) The election thereupon shall be conducted, the votes canvassed, and the result declared in the same manner as provided by law in respect to other city elections.

(2)(A) The county board of election commissioners shall certify the result to the mayor.

(B) The result shall be conclusive and not subject to attack unless suit is brought within thirty (30) days after the certification by the county board of election commissioners in the circuit court of the county in which the city is situated to contest the certification.

(e) If the majority of the votes cast on the issue shall be in favor thereof, the city shall thereupon proceed to the election of all of the city officials who were subject to election in the city immediately prior to the date on which the city was organized under the management form of city government.

(f) If no suit is brought to contest the certification of the results of the election within the thirty-day period after the certification, the mayor shall file certificates stating that the proposition was adopted with the Secretary of State and county clerk of the county in which the city is situated.

(g)(1) The election of the city officials shall be held at the next time provided for the election of city officials under the statutes then in effect pertaining to the aldermanic form of government pertaining to the class of cities to which the particular city belongs.

(2)(A) All laws pertaining to the aldermanic form of government for such class of cities shall apply.

(B)(i) On the date as prescribed by such laws when newly elected city officials take office, the term of office of all members of the board of directors shall terminate, and the transition to the aldermanic form of government shall be completed.

(ii) If, under the aldermanic form of government, the terms of aldermen are staggered, determination shall be made by lot and the length of the terms fixed accordingly.

(h) The provisions of this section for converting to the aldermanic form of government shall be in addition to the right to change to the aldermanic or any other form of municipal government that may exist under present law.

(i)(1) When a municipality elects to adopt the aldermanic form of government in the manner provided in this section, the question of reorganizing the municipality under the manager form shall not be submitted to the electors within a period of six (6) years, and thereafter only in the manner provided in § 14-47-106.

(2) If the qualified electors of the municipality do not approve the organization of the municipality under the manager form at the election, the proposition shall not again be submitted to the electors of the city for a period of four (4) years, and then only in the manner provided in § 14-47-106.

History. Acts 1957, No. 8, § 26, as added by Acts 1957, No. 389, § 1; 1965, No. 22, § 1; 1965, No. 157, § 2; A.S.A. 1947, § 19-733.

Publisher's Notes. Acts 1965, No. 157, § 5, provided that it is the intent and purpose of this act to make uniform the

requirements for a city having the aldermanic form of government to submit to a vote the question of adopting the manager form of government and for a city having the manager form of government to submit to a vote the question of adopting the aldermanic form of government.

CASE NOTES

ANALYSIS

Constitutionality.

Scope of election.

Constitutionality.

There is nothing in Ark. Const. Amend. 7 limiting the power of the legislature to pass an act authorizing a city to change its form of government at a special election to be called by its mayor on the petition of a certain number of voters therein. Accordingly, this section governs the validity of

the ballot procedure. *Moorman v. Priest*, 310 Ark. 525, 837 S.W.2d 886 (1992).

Scope of Election.

This section provides that the only issue to be presented is the question of whether to organize under the aldermanic form; therefore, petitions and ballot calling for the establishment of six wards were beyond statutory authority, and trial court's ruling that the proposal was invalid was proper. *Moorman v. Priest*, 310 Ark. 525, 837 S.W.2d 886 (1992).

14-47-108. Effect of reorganization.

(a)(1) When, in connection with the reorganization of a municipality under this chapter, an initial board of directors shall be elected, the reorganization shall be deemed to be effective as of the time when the respective terms of office of the directors commence.

(2) Concurrently with the commencement of the terms of the directors:

(A) The office of mayor, as existing under the aldermanic form of government, all memberships on the city council, and all memberships on the board of public affairs shall become vacant, each of these offices being abolished as to cities reorganized under this chapter;

(B) The statutory term of office of the city treasurer, city clerk, city attorney, city marshal, and recorder in cities of the second class shall cease and terminate, and the incumbent of each of these offices shall remain in office subject to removal and replacement at any time by the board of directors; and

(C)(i) Every other executive officer or executive employee of the city, including, without limiting the foregoing, the city purchasing agent and the members hereinafter called "board members" of every other municipal board, authority, or commission, whether the office, employment, board, authority, or commission exists under statute or under any ordinance or resolution, whose official term of office or employment is fixed by statute, ordinance, or resolution, shall serve until the expiration of the term so fixed, after which the position held by each such executive officer, executive employee, or board member shall be filled through appointment by the board of directors, the appointees to hold at the will of the board.

(ii) Each such executive officer, executive employee, or board member serving on the effective date of the reorganization, and whose office, employment, or board membership carries no fixed term created either by statute, ordinance, or resolution shall be subject to removal and replacement at any time by the board of directors.

(iii) However, the provisions of this subdivision shall be subject to the provisions of subsection (b) of this section and to the exceptions therein contained.

(b)(1) It is expressly directed that a reorganization under this chapter shall not affect, impair, or terminate the employment of any city officers or employees whose employment is subject to, or regulated by, civil service laws.

(2)(A) The reorganization shall not operate to abolish, terminate, or otherwise affect any of the following departments, commissions, authorities, agencies, or offices of the city government then existing:

(i) Waterworks commission existing under §§ 14-234-301 — 14-234-309;

(ii) Sewer committee existing under § 14-235-206;

(iii) Airport commission existing under § 14-359-103;

(iv) Housing authority existing under § 14-169-208.

(v) Any board of civil service commissioners serving under § 14-49-201 et seq., § 14-50-201 et seq., § 14-51-201 et seq., or under any other statute enacted;

(vi) Auditorium commission existing under § 14-141-104;

(vii) Library trustees existing under § 13-2-502;

(viii) City planning commission existing under Acts 1929, No. 108, § 1 [repealed];

(ix) Office of judge of the municipal court existing under Act No. 87 enacted in the year 1915, as amended by Act No. 49 enacted in the year 1951, or existing under § 16-17-204, or existing under § 16-17-303, or existing under any other statute in effect;

(x) Office of judge of the police court as existing under either § 14-43-302 [repealed] or § 16-18-101, or existing under § 16-18-109, or existing under § 16-18-110 [repealed], or under any other statute in effect; or

(xi) Board of commissioners of any improvement district;

(B)(i) The reorganization shall not terminate, impair, or otherwise affect the official status, tenure of office, or powers of the persons

serving as commissioners, committeemen, trustees, or members of any of the boards, authorities, commissions, agencies or departments listed in this subdivision or as judge or clerk of any municipal or police court listed.

(ii) This power, whether consisting of the power to appoint or the power to confirm appointments or nominations, as may be vested in the municipal council immediately prior to the reorganization in respect to the filling of vacancies on the boards, authorities, commissions, agencies, departments, or in the judgeships listed in this subdivision shall be transferred to, and vested in, the board of directors. Each appointee designated by the board to fill a vacancy in any such position shall serve for the statutory term, if any, applicable to the vacancy or, if there is no statutory term, shall serve at the will of the board. However, each judgeship, whether a judgeship on a municipal court or on a police court, which, on the effective date of the reorganization, is on an elective basis shall remain on an elective basis and shall not be subject to the appointive power of the board.

History. Acts 1921, No. 99, § 3; Pope's Dig., § 10091; Acts 1957, No. 8, § 3; 1957, No. 226, § 1; A.S.A. 1947, § 19-703.

§ 1, referred to in this section, was repealed by Acts 1957, No. 186, and a new law enacted; see § 14-56-401 et seq.

Publisher's Notes. Acts 1929, No. 108,

14-47-109. Board of directors generally.

(a)(1) The seven (7) directors elected by a city reorganized under this chapter shall be known and designated as the board of directors of that city.

(2) The board shall constitute the supreme legislative and executive body of the city and, subject to § 14-47-120(10), shall be vested with all powers and authority which, immediately prior to the effective date of the reorganization, were vested under then-existing laws, ordinances, and resolutions in the mayor and council of that city and in its board of public affairs.

(3) Except where expressly permitted under this chapter, a board member may not serve the city in any other capacity.

(b)(1) For election purposes, the positions on the board shall be permanently designated as positions numbered respectively one, two, three, four, five, six, and seven.

(2)(A) Each candidate for election to membership on the board shall specify the position for which he is running.

(B) The electors shall vote separately on the candidates for each position, with the position sought by each candidate to be shown on the ballot.

(c) The candidate for any designated position on the board of directors who, in any general or special election, shall receive votes greater in number than those cast in favor of any other candidate for the position shall be deemed to be elected.

(d)(1) All regular and special elections of directors shall be nonpartisan, the ballots to show no party designation.

(2) In all regular and special elections, each candidate for the office of director shall be elected by the electors of the city at large.

(3) A director shall not be prohibited from holding successive terms of office.

(e)(1) Any director elected at a special election shall take office on the first Monday following the certification of his election as required in this chapter.

(2) A director elected at a regular election shall take office on January 1 next following his election.

(f)(1) At any regular or special election for the election of a director, any adult person who has resided within the municipality for at least thirty (30) days and is qualified to vote at an election of county or state officers shall be deemed a qualified elector.

(2) Any person more than twenty-one (21) years of age possessing these same qualifications also shall be eligible to run for the office of director.

(g) When a city is reorganized under this chapter, at the first meeting of its initial board, the seven (7) directors will be divided by lot into two (2) classes. The tenure of office of those in each class shall be as follows:

(1) Those in class number one, which shall contain three (3) members, shall serve until and including December 31 following the first regular election held after their term of office commences and until their successors have been elected and qualified. Thereafter, those in class number one shall serve four-year terms.

(2) Those in class number two, which shall contain four (4) members, shall serve until and including December 31 following the second regular election held after their term of office commences and until their successors have been elected and qualified. Thereafter, those in class number two shall serve four-year terms.

History. Acts 1921, No. 99, § 4; Pope's Dig., § 10092; Acts 1947, No. 403, § 2; 1957, No. 8, § 4; 1973, No. 168, § 1; 1979, No. 68, § 1; A.S.A. 1947, § 19-704; Acts 1989, No. 905, § 6.

Publisher's Notes. Acts 1973, No. 498,

§ 4, provided that the provisions of this act shall be supplemental to the provisions of Act 99 of 1921, as amended, and shall repeal only those laws or parts of laws that specifically conflict.

CASE NOTES

ANALYSIS

Constitutionality.
At-large elections.
Candidates.

Constitutionality.

Provisions in subsection (c), as amended by Act 168 of 1973, tended to disenfranchise many voters and were therefore invalid. *Mears v. City of Little Rock*, 256 Ark. 359, 508 S.W.2d 750 (1974).

At-Large Elections.

Black citizens who alleged that the at-large method of electing city directors effectively diluted the voting power of blacks were not entitled to injunctive relief pursuant to 42 U.S.C. § 1983, since they did not demonstrate that they had had less opportunity than other citizens or groups of citizens to participate in the election of city directors and in the political processes and government of the city. *Leadership Roundtable v. City of Little*

Rock, 499 F. Supp. 579 (E.D. Ark. 1980), aff'd, 661 F.2d 701 (8th Cir. 1981).

Candidates.

A political practice pledge is not required of the candidates for board of directors in cities operating under the city

manager form of government, since all such candidates run without political affiliation. Williams v. Pulaski County Election Comm'n, 249 Ark. 309, 459 S.W.2d 52 (1970).

14-47-110. Election of directors.

(a) Candidates for the office of director shall be nominated and elected as follows:

(1)(A)(i) A special election for the election of the initial membership of the board shall be called by the mayor as provided in § 14-47-106.

(ii) The mayor's proclamation shall be published through one (1) insertion in some newspaper having a bona fide circulation in the municipality not less than sixty (60) days before the date of the election.

(B)(i) A special election to fill any vacancy under § 14-47-113 shall be called through a resolution of the board of directors.

(ii) A proclamation announcing the holding of the election shall be signed by the mayor and published not less than sixty (60) days prior to the date of the election in some newspaper having a bona fide circulation in the municipality.

(2) The petition mentioned in subdivision (a)(3) of this section supporting the candidacy of each candidate to be voted upon at any general or special election shall be filed with the city clerk or recorder not less than sixty (60) days before the election by twelve o'clock noon.

(3)(A)(i) In respect to both special and general elections, the name of each candidate shall be supported by a petition, signed by at least fifty (50) qualified electors of the municipality, requesting the candidacy of the candidate.

(ii) The petition shall show the residence address of each signer and shall carry an affidavit signed by one (1) or more persons, in which the affiant or affiants shall vouch for the eligibility of each signer of the petition.

(B) Each petition shall be substantially in the following form:

"The undersigned, duly qualified electors of the City of, Arkansas, each signer hereof residing at the address set opposite his or her signature, hereby request that the name of..... be placed on the ballot as a candidate for election to Position No on the Board of Directors of said City of at the election to be held in such City on the day of, 19 ... We further state that we know said person to be a qualified elector of said City and a person of good moral character and qualified in our judgment for the duties of such office."

(C) A petition for nomination shall not show the name of more than one (1) candidate.

(D)(i) The name of the candidate mentioned in each petition, together with a copy of the election proclamation if the election is a special election, shall be certified by the city clerk or recorder to the

county board of election commissioners not less than thirty-five (35) days before the election unless the clerk or recorder finds that the petition fails to meet the requirements of this chapter.

(ii)(a) Whether the names of the candidates so certified to the county board of election commissioners are to be submitted at a biennial general election or at a special election held on a different date, the election board shall have general supervision over the holding of each municipal election.

(b) In this connection, the board shall post the nominations, print the ballots, establish the voting precincts, appoint the election judges and clerks, determine and certify the result of the election, and determine the election expense chargeable to the city, all in the manner prescribed by law in respect to general elections. It is the intention of this chapter that the general election machinery of this state shall be utilized in the holding of all general and special elections authorized under this chapter.

(c) The result of the election shall be certified by the election board to the city clerk or recorder.

(4) The candidate for any designated position on the board of directors who, in any general or special election, shall receive votes greater in number than those cast in favor of any other candidate for the position shall be deemed to be elected.

(b) Each director, before entering upon the discharge of his duties, shall take the oath of office required by the Arkansas Constitution, Article 19, Section 20.

History. Acts 1921, No. 99, §§ 5, 8; Pope's Dig., §§ 10093, 10096; Acts 1957, No. 8, §§ 5, 6; 1965, No. 6, § 1; A.S.A. 1947, §§ 19-705, 19-708; Acts 1989, No. 347, § 1; 1993, No. 541, § 1.

Amendments. The 1993 amendment, in (a)(2), substituted "subdivision (a)(2) of

this section" for "subdivision (3) of this subsection", and added "by twelve o'clock noon" at the end; inserted "or her" preceding "signature" and substituted "request" for "requests" in the form in (a)(3)(B); and made other minor punctuation changes.

CASE NOTES

ANALYSIS

Elections.

—Candidates.

Elections.

Black citizens who alleged that the at large method of electing city directors effectively diluted the voting power of blacks were not entitled to injunctive relief pursuant to 42 U.S.C. § 1983, since they did not demonstrate that they had had less opportunity than other citizens or groups of citizens to participate in the election of city directors and in the political processes and government of the city. *Leadership Roundtable v. City of Little*

Rock, 499 F. Supp. 579 (E.D. Ark. 1980), *aff'd*, 661 F.2d 701 (8th Cir. 1981).

—Candidates.

A political practice pledge is not required of the candidates for board of directors in cities operating under the city manager form of government, since all such candidates run without political affiliation. *Williams v. Pulaski County Election Comm'n*, 249 Ark. 309, 459 S.W.2d 52 (1970).

Cited: *Mears v. City of Little Rock*, 256 Ark. 359, 508 S.W.2d 750 (1974); *Knoop v. City of Little Rock*, 277 Ark. 13, 638 S.W.2d 670 (1982).

14-47-111. Refusal of director to serve.

(a) Any person who shall have been elected or appointed a director and shall neglect or refuse to qualify and serve as such shall be guilty of a misdemeanor and fined in any sum of not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300).

(b) However, the directors, for good cause shown, may permit a director to resign.

History. Acts 1921, No. 99, § 14; § 8; 1983, No. 650, § 1; A.S.A. 1947, § 19-Pope's Dig., § 10102; Acts 1957, No. 8, 714.

14-47-112. Removal of director.

(a) The holder of office of city director is subject to removal by the electors qualified to vote for a successor of the incumbent.

(b) The procedure to effect the removal of the incumbent of this elective office shall be as follows:

(1)(A)(i) A petition shall be filed with the city clerk. This petition shall be signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least thirty-five percent (35%) of the number of ballots cast for all candidates for directors at the preceding primary election at which directors were nominated or elected, demanding the election of a successor of the person sought to be removed.

(ii) The petition shall contain a statement of the grounds and reasons on account of which the removal is sought.

(B) The signatures to the petition need not all be appended to one (1) paper, but each signer shall add to his signature his place of residence, giving street and number, if any.

(C) One of the signers of each of the papers shall make oath before an officer competent to administer oaths that the statements therein made are true as he believes and that each signature to the paper appended is a genuine signature of the person whose name it purports to be.

(2)(A)(i) Within ten (10) days of the date of filing the petition, the city clerk shall ascertain and determine whether or not the petition is signed by the requisite number of qualified electors.

(ii) If necessary, the board of directors shall allow the city clerk extra help for that purpose.

(B) The city clerk shall attach to the petition his certificate showing the result of his examination;

(3)(A)(i) If by the clerk's certificate the petition is shown to be insufficient, it may be amended within ten (10) days.

(ii) Within ten (10) days after an amendment, the clerk shall make like examination of the amended petition.

(B)(i) If his certificate shall show the amended petition to be insufficient, it shall be returned to the person filing it, without prejudice, however, to the filing of a new petition to the same effect.

(ii) If the petition shall be deemed sufficient, the clerk shall submit it to the board without delay;

(4)(A) If the board shall find the petition thus submitted to it contains the requisite number of electors signed thereto and is otherwise found to be sufficient, it shall order and fix a date for holding an election. This date shall be not less than thirty (30) days nor more than forty (40) days from the date of the clerk's certificate to the board that a sufficient petition is filed.

(B) The board shall make, or cause to be made, publication of notice and all arrangements for holding the election;

(5)(A) The election shall be conducted, returned, and the result thereof declared in all respects as are other such elections under the general election laws of the city.

(B) At the election, the proposition submitted to the electors shall be:

"FOR the removal of from the office of director"
(name of officer)

"AGAINST the removal of from the office of director;"
(name of officer)

(6)(A) If the majority of votes cast on the issue shall be in favor of the removal of the officer, the officer shall be deemed removed and his office vacated, and it shall be filled in the manner provided for filling vacancies.

(B) If the majority of the votes cast on that issue shall be against the removal of the officer, the officer shall continue to serve;

(c) No recall petition shall be filed against any officer until he shall have held his office for at least six (6) months, nor shall any officer be subject to more than one (1) recall proceeding between biennial elections.

History. Acts 1921, No. 99, § 18;
Pope's Dig., § 10106; A.S.A. 1947, § 19-718.

CASE NOTES

Constitutionality.

Suit for a declaratory judgment as to constitutionality of this section was dis-

missed where there was no case or controversy. *Cummings v. City of Fayetteville*, 294 Ark. 151, 741 S.W.2d 638 (1987).

14-47-113. Director vacancy.

Whenever a vacancy shall occur, by any reason, in the office of a director, the board of directors shall, by majority vote, elect a person to fill the vacancy and serve for the unexpired term thereof.

History. Acts 1921, No. 99, § 13;
Pope's Dig., § 10101; Acts 1967, No. 188,
§ 1; A.S.A. 1947, § 19-713.

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law,
Public Law, 1 UALR L.J. 230 (1978).

14-47-114. Director not compensated — Per diem.

(a) The board of directors of any city with the city manager form of government may, by ordinance, provide for the compensation of board members.

(b) Directors of a city having a population of at least four thousand (4,000) but not more than four thousand five hundred (4,500) and located in a county having a population of one hundred thousand (100,000) or more may receive a per diem to be fixed by ordinance of the board not to exceed one hundred dollars (\$100) for attending designated meetings of the board. In no event shall any director receive per diem in excess of two hundred dollars (\$200) for any one (1) month.

History. Acts 1921, No. 99, § 14; 714; Acts 1987, No. 458, § 1; 1991, No. Pope's Dig., § 10102; Acts 1957, No. 8, 1012, § 1.
§ 8; 1983, No. 650, § 1; A.S.A. 1947, § 19-

14-47-115. Prohibition against director interest in contracts.

(a)(1) A director of the city shall not be interested, directly or indirectly, in any contracts made with the city unless the board of directors of the city shall have enacted an ordinance specifically permitting a director to conduct business with the city and prescribing the extent of this authority.

(2) This prohibition shall not apply to contracts for the furnishing of supplies, equipment, or services to be performed for a municipality by a corporation in which no director holds any executive or managerial office, or by a corporation in which a controlling interest is held by stockholders who are not directors.

(b) Any director acting on any contract with the city in which he is interested or receiving any benefit in violation of this section shall be guilty of a misdemeanor and fined in any sum of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000).

History. Acts 1921, No. 99, § 14; § 8; 1983, No. 650, § 1; A.S.A. 1947, § 19-
Pope's Dig., § 10102; Acts 1957, No. 8, 714.

14-47-116. Mayor.

(a)(1) The board of directors shall organize by electing one of their number as a chairman to preside over the meetings of the board, the person so elected to have the title of "mayor".

(2)(A) Except as provided in subdivision (2)(B) of this subsection the mayor shall serve in this capacity for two (2) years from the date of his election as mayor unless his tenure of office as a director expires

in less than two (2) years, in which event he will serve as mayor merely until the expiration of his tenure of office as director.

(B) The board of directors of any city may provide by ordinance that the term of mayor in the city shall be one (1) year, in which event the mayors of the city selected thereafter shall be selected for and serve terms of one (1) year.

(3) When the mayor's term expires, the board shall elect a successor mayor. However, the mayor shall not be prohibited from serving in this capacity for more than one (1) term.

(4) The mayor shall receive no compensation for his duties in such capacity but shall be reimbursed for all actual expenses incurred by him in the discharge of his duties as mayor.

(b) The mayor shall have the following powers:

(1) He shall preside at all meetings of the board;

(2) He shall be recognized as the head of the city government for all ceremonial purposes and by the Governor for the purposes of military law;

(3) He shall sign, on behalf of the city, all written agreements, contracts, bonds, mortgages, pledges, indentures, conveyances, and other written instruments, the execution of which has been approved by the board; and

(4) He may vote on all matters coming before the board but shall have no veto power.

History. Acts 1921, No. 99, § 8; Pope's Dig., § 10096; Acts 1957, No. 8, § 6; 1985, No. 21, § 1; A.S.A. 1947, § 19-708.

14-47-117. Assistant mayor.

(a)(1) The board shall also elect from its membership an assistant mayor who shall serve in such capacity for two (2) years or until his tenure of office as a director expires, whichever period may be shorter. Provided, however, that the board may, at its option, prescribe a method to rotate the assistant mayor among all or part of its membership for a term of not less than six (6) consecutive months.

(2) The assistant mayor shall not be prohibited from serving in such capacity for more than one (1) term.

(b)(1) The assistant mayor shall act as mayor during the absence or disability of the mayor.

(2)(A) If a vacancy in the office of mayor occurs, the assistant mayor shall perform the duties of mayor until a successor mayor is elected.

(B)(i) If the mayor shall be continuously absent or disabled for more than six (6) months, his office will automatically become vacant and a successor mayor shall be elected.

(ii)(a) A certificate of the city clerk or recorder, recorded in the record of the proceedings of the board, as to the absence or disability of the mayor or as to any vacancy in the office of mayor may be relied upon by all persons dealing with the municipality as conclusive

evidence of the assistant mayor's authority to assume the powers of the mayor.

(b)(1) Where any such certificate is so recorded, upon the termination of the absence or disability of the mayor and the resumption by him of his official duties as such, the city clerk or recorder shall record in the records of the board a separate certificate attesting this fact.

(2) This separate certificate shall show the date of such termination of absence or disability and resumption of duties.

(c) If both the mayor and assistant mayor should be absent or disabled from performing their duties, the board may, by resolution, designate one of its members as acting mayor, to serve during the absence or disability and no longer.

History. Acts 1921, No. 99, § 8; Pope's Dig., § 10096; Acts 1957, No. 8, § 6; A.S.A. 1947, § 19-708; Acts 1997, No. 471, § 1.

Amendments. The 1997 amendment added the last sentence in (a)(1).

14-47-118. Acting mayor.

If both the mayor and assistant mayor should be absent or disabled from performing their duties, the board, by resolution, may designate one of its members as acting mayor to serve during the absence or disability and no longer.

History. Acts 1921, No. 99, § 8; Pope's Dig., § 10096; Acts 1957, No. 8, § 6; A.S.A. 1947, § 19-708.

14-47-119. Employment of city manager.

(a) The initial board of directors, as promptly as possible after effecting its organization, shall employ a city manager. The city manager's employment shall be for an indefinite term. Thereafter, subject only to such interruptions as are unavoidable, a city manager shall be maintained in the employ of the city. The appointment and continued employment by the board of a city manager shall be mandatory.

(b)(1) It shall not be essential that the city manager, at the time of his employment, be a qualified elector of the city or of the State of Arkansas or a resident of the city or of the State of Arkansas.

(2) However, the city manager shall be a person found by the board to have special qualifications in respect to the management of municipal affairs.

(3) During his employment, he shall reside in the city and devote his full time to the business of the city.

(4) Notwithstanding the provisions of subdivision (b)(3) of this section regarding the residency requirements for city managers, the city manager of a city with a city manager form of government and with a population of less than six thousand (6,000) persons, upon approval of

a majority of the board of directors of the city, may reside outside the city during his employment as city manager.

(c) A member of the board may not be appointed city manager, nor acting city manager, during the term for which he shall have been elected nor within three (3) years following the expiration of the member's term of office as director.

(d) The city manager shall receive a salary in such amount as may be fixed by the board.

(e) The board, on the vote of a majority of its elected membership, may terminate the city manager's employment at any time, either with or without cause.

(f)(1) The city manager shall furnish a fidelity bond, the premiums on which shall be paid by the city, in such amount, on such form, and with such security as may be approved by the board.

(2) The bond, in no event, shall be less than twenty-five thousand dollars (\$25,000).

History. Acts 1921, No. 99, § 12; Pope's Dig., § 10100; Acts 1957, No. 8, § 7; A.S.A. 1947, § 19-712; Acts 1987, No. 25, § 1.

A.C.R.C. Notes. The operation of subsection (f) of this section was suspended by adoption of a self-insured fidelity bond

program for public officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The subsection may again become effective upon cessation of coverage under that program. See § 21-2-703.

CASE NOTES

Status.

A city manager under this section, as amended in 1957, is an employee, and not

an officer. *Mann v. Lowry*, 227 Ark. 1132, 303 S.W.2d 889 (1957).

14-47-120. Powers and duties of city manager.

The city manager shall have the following powers and duties:

(1) To the extent that such authority is vested in him through ordinance enacted by the board of directors, he may supervise and control all administrative departments, agencies, offices, and employees;

(2) He shall represent the board in the enforcement of all obligations in favor of the city or its inhabitants which are imposed by law, or under the terms of any public utility franchise, upon any public utility;

(3) He may inquire into the conduct of any municipal office, department, or agency which is subject to the control of the board, in which connection he shall be given unrestricted access to the records and files of any such office, department, or agency and may require written reports, statements, audits, and other information from the executive head of the office, department, or agency;

(4)(A) He shall nominate, subject to confirmation by the board, persons to fill all vacancies at any time occurring in any office, employment, board, authority, or commission to which the board's appointive power extends.

(B)(i) He may remove from office all officials and employees including, without limiting the foregoing, members of any board, authority, or commission who under laws, whether applicable to cities under the aldermanic or management form of government, may be removed by the city's legislative body.

(ii)(a) Removal by the city manager shall be approved by the board.

(b) Where, under the statute applicable to any specific employment or office, the incumbent may be removed only upon the vote of a specified majority of the city's legislative body, the removal of the person by the city manager may be confirmed only upon the vote of the specified majority of the board members.

(C) The provisions of this subdivision (4) shall have no application to offices and employments controlled by any civil service or merit plan lawfully in effect in the city. Moreover, in cities maintaining municipal courts or police courts under the authority of any statute in effect, the municipal judge, police judge, and the clerk of any such court shall be elected and appointed in the manner prescribed by law; (5)(A) To the extent that, and under such regulations as, the board may prescribe by ordinance, he may:

(i) Contract for and purchase, or issue purchase authorizations for, supplies, materials, and equipment for the various offices, departments, and agencies of the city government, and he may contract for, or authorize contracts for, services to be rendered to the city or for the construction of municipal improvements. However, in such connection, the board shall, by ordinance, establish a maximum amount, and each contract, purchase, or authorization exceeding the amount so established shall be effected after competitive bidding as required in § 14-47-138;

(ii) Approve for payment, out of funds previously appropriated for that purpose, or disapprove any bills, debts, or liabilities asserted as claims against the city. However, the board shall, by ordinance, establish in that connection a maximum amount, and the payment or disapproval of each bill, debt, or liability exceeding that amount shall require the confirmation of the board or of a committee of directors created by the board for this purpose;

(iii) Sell or exchange any municipal supplies, materials, or equipment. The board shall, by ordinance, establish an amount, and no item or lot, to be disposed of as one (1) unit, of supplies, materials, or equipment shall be sold without competitive bidding unless the city manager shall certify in writing that, in his opinion, the fair market value of the item or lot is less than the amount established by ordinance as prescribed; and

(iv) Transfer to any office, department, or agency or he may transfer from any office, department, or agency to another office, department, or agency any materials and equipment.

(B) For the purpose of assisting the city manager in transactions arising under subdivisions (5)(A)(i), (ii), and (iii) of this section, the

board may appoint one (1) or more committees to be selected from its membership. Or in the alternative, it may create one (1) or more offices or departments to be composed of personnel approved by the city manager. If, for these purposes, the board shall create any new office or department, the person appointed to fill the office or to head the department shall be responsible to the city manager and act under his direction;

(6) He shall prepare the municipal budget annually and submit it to the board for its approval or disapproval and be responsible for its administration after adoption;

(7) He shall prepare and submit to the board, within sixty (60) days after the end of each fiscal year, a complete report on the finances and administrative activities of the city during the fiscal year;

(8) He shall keep the board advised of the financial condition and future needs of the city and make such recommendations as to him may seem desirable;

(9) He shall sign all municipal warrants when authorized by the board to do so;

(10) He shall have all powers, except those involving the exercise of sovereign authority, which, under statutes applicable to municipalities under the aldermanic form of government or under ordinances and resolutions of the city in effect at the time of its reorganization, may be vested in the mayor;

(11) He shall perform such additional duties and exercise such additional powers as may, by ordinance, be lawfully delegated to him by the board.

History. Acts 1921, No. 99, § 12; Pope's Dig., § 10100; Acts 1957, No. 8, § 7; A.S.A. 1947, § 19-712.

CASE NOTES

Removal of Employees.

Trial court's failure to make factual findings as to whether interracial associations between a black man, who had been appointed to head a division of a community's model cities program, and a

white woman, whom he had employed, were a factor in their discharge by city manager required a reversal of a judgment upholding the discharges. *Langford v. City of Texarkana*, 478 F.2d 262 (8th Cir. 1973).

14-47-121. Acting city manager.

(a) If the city manager is absent from the city or is unable to perform his duties, if the board of directors suspends the city manager, or if there is a vacancy in the office of city manager, the board may, by resolution, appoint an acting city manager to serve until the city manager returns, until his disability or suspension ceases, or until another city manager is appointed and qualifies, as the case may be.

(b) The board may suspend or remove an acting city manager at any time.

(c)(1) The board, in the exercise of its discretion, may determine whether the acting city manager shall furnish bond.

(2) If in any instance, the board requires the acting city manager to furnish bond, it shall, in respect to form, amount, and security, be subject to the approval of the board.

(d) The acting city manager shall receive a reasonable compensation to be fixed by the board.

History. Acts 1921, No. 99, § 12; 1957, No. 8, § 7; A.S.A. 1947, § 19-712.

Cross References. Self-Insured Fidelity Bond Program, § 21-2-701 et seq.

14-47-122. Police court.

(a) There shall be a police court of a city organized under this chapter, presided over by a police judge with the authority and power of police courts in cities of the first class under the laws governing cities of the first class for the police court.

(b) The board of directors shall elect a police judge, who shall hold office for two (2) years, at a salary to be fixed by the board. The judge shall be subject to removal for cause by the board.

(c) Should the General Assembly create a municipal court which has jurisdiction in a city adopting the provisions of this chapter, then this section relating to the police court shall not be effective. In the event that the municipal court should cease to exist, then these provisions shall be in full force and effect.

History. Acts 1921, No. 99, §§ 9-11; Pope's Dig., §§ 10097-10099; A.S.A. 1947, §§ 19-709 — 19-711.

Cross References. Municipal courts, § 16-17-101 et seq.

Police court established in lieu of municipal court; change to municipal court, § 16-18-111.

Removal of elective or appointed officers, § 14-42-109.

14-47-123. Meetings of board of directors.

(a)(1) A majority of the elected membership of the board of directors shall constitute a quorum for the transaction of business.

(2) Except where otherwise provided by law, the concurring vote of a majority of those attending a meeting, provided a quorum is present, shall represent the action of the board.

(b) The board shall meet on days certain to be chosen in advance by the board within the first and third weeks in each calendar month, except when any meeting date falls on a legal holiday, in which event the meeting shall be held on a substituted date fixed by adjournment at the preceding meeting.

(c)(1) Special meetings may be called at any time by the mayor or by directors representing a majority of the elected membership of the board.

(2) The board may, by ordinance, establish the procedure for calling and giving notice of special meetings.

(d) All meetings shall be open to the public.

(e) Every motion, resolution, and ordinance adopted by the board shall be signed by the mayor. Each of the foregoing shall be attested by the city clerk, if the municipality is a city of the first class, if otherwise, by the recorder.

(f) All laws not inconsistent with this chapter which immediately prior to its reorganization under this chapter controlled the proceedings of the council of the city, including, without limitation, procedure for the adoption, enactment, and publication of ordinances and resolutions, shall govern the proceedings of its board.

History. Acts 1921, No. 99, § 8; Pope's Dig., § 10096; Acts 1957, No. 8, § 6; 1965, No. 6, § 1; A.S.A. 1947, § 19-708.

14-47-124. Initiative and referendum.

(a) The initiative and referendum laws of this state are applicable to cities reorganized under this chapter.

(b) The number of signatures required upon any petition shall be computed upon the highest vote cast at the preceding general election for any position on the board of directors of the municipality.

History. Acts 1921, No. 99, § 17; Pope's Dig., § 10105; Acts 1957, No. 8, § 11; A.S.A. 1947, § 19-717.

CASE NOTES

ANALYSIS

Constitutionality.
Signatures.

Constitutionality.

This section is not unconstitutional as a violation of Ark. Const. Amend 7. *Czech v. Munson*, 280 Ark. 219, 656 S.W.2d 696 (1983).

Signatures.

Where city clerk refused to accept referendum petition that had less than the

minimum required number of signatures and complaint was filed in chancery court by proponents of petition asking that this section be declared unconstitutional and that the clerk be ordered to accept the petition, motion to dismiss complaint should have been granted, since complaint did not state a cause of action. *Czech v. Munson*, 280 Ark. 219, 656 S.W.2d 696 (1983).

Cited: *Moorman v. Priest*, 310 Ark. 525, 837 S.W.2d 886 (1992).

14-47-125. Budget and appropriations.

(a) The approval by the board of directors of the budget shall amount to an appropriation for the purposes of the budget of the funds which are lawfully applicable to the different items therein contained.

(b) The board may alter or revise the budget from time to time, and unpledged funds appropriated by the board for any specific purpose may, by subsequent action of the board, be appropriated to another purpose, subject to the following exceptions:

(1) Funds resulting from taxes levied under statute or ordinance for a specific purpose may not be diverted to another purpose; and

(2) Appropriated funds may not be diverted to another purpose where any creditor of the municipality would be prejudiced thereby.

History. Acts 1921, No. 99, § 16; 1957, No. 8, § 10; A.S.A. 1947, § 19-716.

CASE NOTES

Cited: *Prismo Universal Corp. v. City of Little Rock*, 251 Ark. 326, 472 S.W.2d 96 (1971).

14-47-126. Annual audit.

The board of directors shall be obligated to have the financial affairs of the city audited annually by an independent certified public accountant who is not otherwise in the service of the city.

History. Acts 1921, No. 99, § 16; 1957, No. 8, § 10; A.S.A. 1947, § 19-716.

CASE NOTES

Cited: *Prismo Universal Corp. v. City of Little Rock*, 251 Ark. 326, 472 S.W.2d 96 (1971).

14-47-127. Civil service plans.

(a) If, on the effective date of the reorganization of any city under this chapter, a civil service plan for any municipal employees or officers shall be in effect in the city, reorganization under this chapter shall not terminate or otherwise impair the civil service plan. That plan shall remain in full force and effect, subject to § 14-47-131, following the reorganization under this chapter.

(b) The municipal civil service plans made available under the provisions of § 14-49-101 et seq., § 14-50-101 et seq., and § 14-51-101 et seq., may be adopted, subject to § 14-47-131, by any city reorganized under this chapter.

History. Acts 1957, No. 8, § 13; A.S.A. 1947, § 19-720.1.

Publisher's Notes. The former last sentence of this section provided that, inasmuch as civil service programs are

made available under the statutes enumerated to cities organized under this chapter, Acts 1921, No. 99, § 20, providing for a civil service commission, was repealed.

14-47-128. Deferred compensation agreements.

(a) Any city in the State of Arkansas organized and operating under a management form of municipal government is authorized and empowered to enter into a deferred compensation agreement with any employee of the city for the purpose of deferring payment of any portion of the employee's salary or income and to deposit the deferred compen-

sation funds with a third party, agreed to in writing by the employee, in trust, with directions that the funds be paid to the employee as authorized by the deferred compensation agreement.

(b) For the purposes of this section, a "deferred compensation agreement" is any agreement approved by the city for its employees and executed by an employee of the city, the city, and a third party, as trustee, chosen by the employee, where the third party agrees to pay a periodic income to the employee in the event of retirement or disability or to the employee's beneficiary in the event of death.

(c) Deferred compensation funds deposited with a third party trustee as provided for in this section may be invested and reinvested by the trustee in any manner which, in its sole discretion, it deems desirable, notwithstanding legal limitations on the investment of public funds as provided for by the laws of the State of Arkansas.

History. Acts 1975, No. 874, §§ 1-3;
A.S.A. 1047, §§ 19-736 — 19-738.

14-47-129. Dependents of killed police officer or fire fighter.

(a) Whenever a police officer or fire fighter of the city shall be killed in the actual performance of his official duties, the board of directors shall cause to be set aside for the use and benefit of his wife and children or others necessarily dependent upon him for their support, if they survive him, the sum of one thousand dollars (\$1,000).

(b) This sum shall be paid in installments as shall be required and, in the judgment of the boards, as shall be deemed advisable.

History. Acts 1921, No. 99, § 30;
Pope's Dig., § 10118; A.S.A. 1947, § 19-728.

14-47-130. Public health jurisdiction.

(a) The board of directors shall have power to pass such ordinances and to make and enforce such rules and regulations as shall be necessary to promote the public health and to prevent and control disease.

(b) Their jurisdiction in all matters pertaining to health and sanitation, and for purposes of quarantine, shall extend five (5) miles beyond the city limits.

History. Acts 1921, No. 99, § 21;
Pope's Dig., § 10109; A.S.A. 1947, § 19-721.

14-47-131. Creation of new departments, etc.

(a) The board of directors may from time to time by ordinance:

(1) Create any new municipal departments, offices, employments, boards, authorities, commissions, and agencies;

(2) Appoint the personnel to serve in the departments, offices, employments, boards, authorities, commissions, and agencies;

(3) Fix the term of employment and compensation of each appointee; and

(4) Specify whether each appointee shall, or shall not, be subject to the city's civil service or merit system.

(b)(1) By ordinance, the board also, in the exercise of its discretion, may consolidate the office of city treasurer with the office of city clerk or such other office or position as the board may, by ordinance, charge with the responsibility of administering the financial affairs of the city.

(2) The board may:

(A) Delegate all of the duties of the city treasurer to the person holding that office or position in the city;

(B) Fill the consolidated office by appointment;

(C) Fix the term and compensation of the appointee; and

(D) Specify whether the appointee shall be subject to the city's civil service or merit system.

History. Acts 1921, No. 99, § 16; 1957, No. 8, § 10; 1959, No. 50, § 1; A.S.A. 1947, § 19-716.

CASE NOTES

Cited: *Prismo Universal Corp. v. City of Little Rock*, 251 Ark. 326, 472 S.W.2d 96 (1971).

14-47-132. Vacancy on municipal board, etc.

(a) Any vacancy on any municipal board or commission of any city of the first class having a population of less than fifty thousand (50,000) and having a city manager form of government shall be filled by a majority vote of the board of directors of the city.

(b)(1) The provisions of this section shall apply to all existing boards and commissions and to all boards and commissions hereafter established in which vacancies are filled by the remaining members of the board or commission or by the city manager.

(2) The provisions of this section shall not be applicable to any Arkansas city which is divided by a state line from an incorporated city or town in an adjoining state.

History. Acts 1971, No. 74, §§ 1, 2; A.S.A. 1947, §§ 19-734, 19-735.

14-47-133. Appointees generally.

(a) Subject to the exceptions contained in § 14-47-108, every person appointed by the board of directors to any municipal office, employment, or position or to membership on any board, authority, or commission shall serve for such time and shall receive such compensation as the board may fix and determine by ordinance.

(b) This section shall be applicable even in respect to offices and employments which, under statutes applicable to the aldermanic form of government, were held for a fixed term or on a salary basis fixed by statute.

History. Acts 1921, No. 99, § 16; 1957, No. 8, § 10; A.S.A. 1947, § 19-716.

CASE NOTES

Cited: *Prismo Universal Corp. v. City of Little Rock*, 251 Ark. 326, 472 S.W.2d 96 (1971).

14-47-134. Qualifications of appointees.

(a)(1) In the exercise by the board of directors of its authority in respect to the filling of vacancies in executive positions and memberships on municipal boards, authorities, and commissions, only those qualified electors of the city found by the directors to possess the necessary qualifications shall be appointed or confirmed.

(2) Any qualified elector of the State of Arkansas found by the directors to possess the necessary qualifications may be appointed or confirmed to the Board of Trustees of the Arkansas Arts Center.

(b)(1) In filling vacancies on any municipal board, authority, or commission, unless the statute applicable to the position forbids the appointment thereto of a city employee, the city manager, if otherwise qualified, shall be an eligible appointee.

(2) The city manager, however, shall not be, ex officio, a member of any municipal board, authority, or commission.

History. Acts 1921, No. 99, § 3; 1957, No. 8, § 3; 1967, No. 165, § 1; A.S.A. 1947, § 19-703.

14-47-135. Relations barred from employment.

No person shall hold an appointive position or employment in the pay of the city if that person is related by blood or marriage in the third degree either to a member of the board of directors or to the city manager. Provided, however, this prohibition shall not prevent a person who holds an appointive or employment position with the city at the time the person's relative becomes city manager or a member of the board of directors from continuing in that position or employment.

History. Acts 1921, No. 99, § 32; Pope's Dig., § 10120; A.S.A. 1947, § 19-730; Acts 1993, No. 117, § 1.

Amendments. The 1993 amendment added the second sentence.

14-47-136. Bond of officers and employees.

All officers and employees of a city reorganized under this chapter with the exception of the city manager, whose bond requirement is controlled by § 14-47-119, shall be required to make bond in such amount, on such form, and with such security as may meet the approval of the board of directors.

History. Acts 1957, No. 8, § 20; A.S.A. 1947, § 19-729.

Cross References. Self-Insured Fidelity Bond Program, § 21-2-701 et seq.

14-47-137. Prohibited actions by officers or employees.

(a)(1) No officer or employee elected or appointed in any city shall be interested, directly or indirectly, in any contract or job for work or materials, or the profits thereof, or service to be furnished or performed for the city unless the board of directors of the city shall have enacted an ordinance specifically permitting an officer or employee to conduct business with the city and prescribing the extent of this authority.

(2) This prohibition shall not apply to contracts for the furnishing of supplies, equipment, or services to be performed for a municipality by a corporation in which no officer holds any executive or managerial office, or by a corporation in which a controlling interest is held by stockholders who are not officers or employees.

(b)(1) No officer or employee shall accept or receive, directly or indirectly, any frank, pass, free ticket, or free service from any person, firm, or corporation operating within the territorial limits of the city any public transportation service, gas works, waterworks, electric light or power plant, heating plant, telegraph line or telephone exchange, or other business acting or operating under a public franchise of the city; nor shall any officer or employee accept or receive, directly or indirectly, from any person, firm, or corporation, or its agents, any other service upon terms more favorable than those granted to the public generally.

(2) The prohibition of free transportation shall not apply to police officers or fire fighters in uniform; nor shall any free service to city officials heretofore provided by franchise or ordinance be affected by this subsection.

(c) Any person violating the provisions of this section shall be guilty of a misdemeanor and fined in a sum of not less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000), and every such contract or agreement shall be void.

History. Acts 1921, No. 99, § 16; § 10; 1983, No. 650, § 2; A.S.A. 1947, Pope's Dig., § 10104; Acts 1957, No. 8, § 19-716.

RESEARCH REFERENCES

Ark. L. Rev. Official misconduct under the Arkansas Criminal Code, 30 Ark. L. Rev. 160.

CASE NOTES

Cited: *Prismo Universal Corp. v. City of Little Rock*, 251 Ark. 326, 472 S.W.2d 96 (1971).

14-47-138. Competitive bidding required.

(a) Before making any purchase of or contract for any supplies, materials, or equipment, and before obligating the city under any contract for the performance of services or for the construction of municipal improvements, where the anticipated cost to the city of the transaction exceeds the maximum amount established by the board of directors under the authority of § 14-47-120, opportunity for competitive bidding shall be given under such rules and regulations as the board may, by ordinance, prescribe, and the contract shall be consummated only on a bid approved by the city manager and by the board.

(b) The board, by ordinance, may waive the requirement of competitive bidding in exceptional situations where this procedure is not feasible, but lacking such exceptional situations, the board may not except any particular contract, purchase, or sale from the requirement of competitive bidding.

(c) All purchase and sale records of the city shall be open to public inspection.

History. Acts 1921, No. 99, § 16; 1957, No. 8, § 10; A.S.A. 1947, § 19-716.

CASE NOTES

ANALYSIS

In general.
Damages.
Professional services.

In General.

A city is required to solicit bids for all contracts except where there is an affirmative showing, by enactment of a separate ordinance, that the solicitation of bids is not feasible or practical. *Klinger v. City of Fayetteville*, 293 Ark. 128, 732 S.W.2d 859 (1987).

Damages.

Violation of this section did not give rise to a claim for damages. *Klinger v. City of*

Fayetteville, 297 Ark. 385, 762 S.W.2d 388 (1988).

Professional Services.

Contracts for professional services are not exempt from the competitive bidding requirements of § 14-58-303 or this section. *Klinger v. City of Fayetteville*, 293 Ark. 128, 732 S.W.2d 859 (1987).

Cited: *Prismo Universal Corp. v. City of Little Rock*, 251 Ark. 326, 472 S.W.2d 96 (1971).

14-47-139. Public utility franchises, etc.

Every ordinance or resolution granting any public utility franchise, or granting the right to occupy the streets, highways, bridges, or other public places in the city for any purpose shall be completed in the form in which it is finally passed and remain on file with the city clerk for public inspection at least one (1) week before its final passage or adoption.

History. Acts 1921, No. 99, § 15; Pope's Dig., § 10103; Acts 1957, No. 8, § 9; A.S.A. 1947, § 19-715.

CHAPTER 48

CITY ADMINISTRATOR FORM OF MUNICIPAL GOVERNMENT

SECTION.

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Effective Dates. Acts 1967, No. 36, § 20; Feb. 2, 1967. Emergency clause provided: "It has been found, and is hereby declared, that the City Administrator form of city government authorized under this Act provides an improved and superior method for the administration and government of cities of the first and second class; that many Arkansas cities would be greatly benefited by immediately changing from the commission, aldermanic or City Manager to the City Administrator form of government; that the pas-

sage of this Act will make available to cities of the first and second class whose present government is inadequate or inefficient, an opportunity to reorganize hereunder and thereby greatly improve the efficiency and economy of their respective municipal governments. Therefore, an emergency is declared to exist and, this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after the date of its passage and approval."

Acts 1991, No. 49, § 7; Feb. 7, 1991.

Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law pertaining to the recall of municipal officials is confusing and conflicting; that this Act clarifies the law; and that clarification should go

into effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

CASE NOTES

Cited: City of Ft. Smith v. Driggers, 294 Ark. 311, 742 S.W.2d 921 (1988).

14-48-101. Applicability.

(a) Any municipality of this state having a population of two thousand five hundred (2,500) or more inhabitants, according to the most recent federal census, or any city of the first class may call and hold an election on the question of becoming organized under, and governed by, the city administrator form of government authorized in this chapter.

(b) Any such election shall be called and conducted in the manner provided in this chapter.

History. Acts 1967, No. 36, § 1; A.S.A. 1947, § 19-801.

14-48-102. Savings provisions.

(a) When a city effects a change of government under this chapter, it shall remain subject to and controlled by all laws, except those inconsistent with this chapter which on the effective date of the reorganization applied to or governed the city including, without limiting the foregoing, the laws relating to improvement districts.

(b) The city, as reorganized, shall have all of the rights, powers, and authority which it had immediately prior to reorganization and shall also be entitled to exercise any right, power, or authority, except those inconsistent with the provisions of this chapter, which are permitted cities organized under any other form of government.

(c) In cities having the commission form of government immediately preceding the adoption of the city administrator form of government, the board of directors elected under the authority of this chapter may, by ordinance duly adopted, organize or reorganize any municipal board, commission, authority, agency, or department pursuant to the authority provided in the general laws of the state for municipalities having the mayor-aldermanic form of government. However, no reorganization shall be lawful which impairs the validity of existing contracts.

(d) All bylaws, ordinances, and resolutions lawfully passed and in force in the city under its former organization and not in conflict with this chapter shall remain in force until altered or repealed by the board elected under the authority of this chapter.

(e) The territorial limits of the city shall remain the same as under its former organization. All rights and property of every description which were vested in it shall remain unimpaired by the reorganization provided for in this chapter.

(f) No existing right or liability either in favor of or against the city or any agency thereof including, without limiting the foregoing, improvement districts and no suit or prosecution of any kind shall be affected by the change unless otherwise provided for in this chapter.

(g) No valid pledge or mortgage of the revenues or property of the city or of any agency or instrumentality thereof or of any municipal improvement district shall be impaired by the reorganization.

History. Acts 1967, No. 36, § 7; A.S.A. 1947, § 19-807.

CASE NOTES

ANALYSIS

Applicability.
Repeal.

Applicability.

City lost the protection of the saving clause when, at the time of the government reorganization, it promoted firemen in accordance with the law governing cities of the first class having a city admin-

istrator form of government contained in this chapter, and including § 14-51-301, which requires promotion solely on the basis of examination. *City of Ft. Smith v. Driggers*, 305 Ark. 409, 808 S.W.2d 748 (1991).

Repeal.

No legislative intent found to repeal this section. *City of Ft. Smith v. Driggers*, 294 Ark. 311, 742 S.W.2d 921 (1988).

14-48-103. Form of government.

The form of municipal government authorized by this chapter shall be known as the city administrator form of municipal government.

History. Acts 1967, No. 36, § 1; A.S.A. 1947, § 19-801.

14-48-104. Submission of governmental form question to electors.

(a) When petitions shall be filed with the county clerk containing the signatures of qualified electors of a municipality equal in number to fifteen percent (15%) of the aggregate number of votes cast at the preceding general municipal election for all candidates for mayor in cases where a municipality operates under the aldermanic form of government or the commission form of government and, for all candidates for the office of director, then for the director position for which the greatest number of votes were cast in the case of a municipality operating under the city manager form of government, and the petition requests that an election be called to submit the proposition of organizing the municipality under the city administrator form of municipal government authorized by this chapter, then the county clerk shall, within ten (10) days after the filing of the petition, certify to the

Secretary of State the number of qualified electors whose signatures appear on the petitions.

(b) If the number of signatures certified by the clerk is equal to, or greater than, fifteen percent (15%) of the aggregate number of votes cast, as prescribed, the Secretary of State shall, by proclamation, call a special election to be held not less than thirty (30) days nor more than fifty (50) days from the date of the clerk's certification.

(c)(1) The election shall be called to submit the proposition of organizing the municipality under the city administrator form of municipal government authorized by this chapter.

(2)(A) The proclamation shall be published one (1) time at length in a newspaper having a general circulation in the municipality.

(B) Notice of the election shall be published in the newspaper one (1) time a week for two (2) weeks, with the first publication to be not less than fifteen (15) days before the date set for the election.

(d) At the election, the proposition shall be submitted to the electors in substantially the following form:

"FOR the City Administrator form of government ☐
AGAINST the City Administrator form of government ☐

(e)(1) The election shall be conducted, the votes canvassed, and the results declared in the same manner as is provided by law with respect to other city elections.

(2)(A) The county board of election commissioners shall certify the results of the election to the Secretary of State.

(B) The result certified shall be conclusive and not subject to attack unless suit is brought to contest the certification within fifteen (15) days after such certification in the circuit court of the county in which the municipality is situated.

(f) If a majority of the votes cast at the election shall be in favor of the proposition and no suit is brought to contest the certification of the results of the election within the fifteen-day period after the certification by the election board, then, within five (5) days, the Secretary of State shall file certificates stating that the proposition was adopted with the county clerk of the county in which the municipality is situated.

(g) The cost of the election provided in this section shall be paid by the city.

History. Acts 1967, No. 36, § 2; A.S.A. 1947, § 19-802.

14-48-105. Procedure to change to another form of government.

(a) When the question of the adoption of the city administrator form of government is submitted to, and approved by, a majority of the qualified electors of a municipality voting on the issue, the question of changing to another form of government shall not again be submitted to the electors of that municipality for a period of four (4) years.

(b)(1) After the expiration of four (4) years from the date on which the first board of directors and mayor take office in a city organized under this chapter, a petition signed by electors equal in number to fifteen percent (15%) of the aggregate number of ballots cast for all candidates for mayor in the preceding general election may be presented to the mayor, calling for an election to consider any other form of municipal government authorized by the laws of this state.

(2)(A)(i) Thereupon, the mayor shall, by proclamation, submit the question of organization of the city under the form of government stated in the petition at a special election to be held at a time specified therein, not less than thirty (30) days after the date of the proclamation.

(ii) The proclamation shall be published at length in some newspaper having a general circulation in the city for one (1) time.

(B)(i) Notice of the election shall be published in some newspaper having a general circulation in the city one (1) time a week for two (2) weeks, the first publication to be not less than fifteen (15) days before the date set for the election.

(ii) No other notice of the election shall be necessary.

(c) At the special election for the submission or resubmission of the proposition, the ballots shall read:

“FOR the proposition to organize this City under the
form of government ☐
AGAINST the proposition to organize this City under the
form of government ☐”

The name of the form of government specified in the petition for election shall be printed on the ballot in lieu of the blank lines appearing above.

(d)(1) The election shall be conducted, the votes canvassed, and the results declared in the same manner as provided by law in respect to other city elections.

(2)(A) The county board of election commissioners shall certify the results to the mayor.

(B) The results shall be conclusive and not subject to attack unless suit is brought in the circuit court of the county in which the city is situated to contest the certification within thirty (30) days after certification by the county board of election commissioners.

(e) If no suit is brought to contest the certification of the results of the election on the question of the form of government within the thirty-day period after certification, the mayor shall file certificates stating that the proposition was adopted with the Secretary of State and county clerk of the county in which the city is situated.

(f)(1)(A) If the majority of the votes cast on that issue shall be in favor of the adoption, the city shall thereupon proceed to the election of all of the city officials required by the laws governing the form of government adopted.

(B) The election of the city officials shall be held at the next time provided for the election of city officials under the statutes then in effect pertaining to the form of government adopted for the class of

cities to which the particular city belongs, and all laws pertaining to the form of government adopted for such class of cities shall apply.

(C)(i) On the date prescribed by these laws when newly elected city officials take office, the term of office of all members of the board and mayor shall terminate and the transition to the form of government adopted shall be completed.

(ii) If under the form of government adopted the terms of the officials elected are staggered, then determination shall be made by lot, and the length of the terms fixed accordingly.

(2) The provisions of this section for converting to another form of government shall be in addition to the right to change to any other form of municipal government that may exist under present law.

(g) If the plan is not adopted by a majority of the voters voting upon that issue at the special election called, the question of adopting that same form of government shall not be resubmitted to the voters of that city for adoption within four (4) years thereafter. At that time the question may be resubmitted upon the presentation to the mayor of a petition signed by electors equal in number to fifteen percent (15%) of the aggregate number of votes cast for all candidates for mayor in the preceding general election.

(h)(1) When a municipality elects to adopt any other form of government in the manner provided in this section, the question of reorganizing the municipality under the city administrator form shall not be submitted to the electors within a period of four (4) years, and thereafter, only in the manner provided in § 14-48-104.

(2) If the qualified electors of the municipality do not approve the organization of the municipality under the city administrator form at the election, the proposition shall not again be submitted to the electors of the city for a period of four (4) years, and then, only in the manner provided in § 14-48-104.

History. Acts 1967, No. 36, § 18;
A.S.A. 1947, § 19-818.

14-48-106. Effect of reorganization.

(a)(1) When, in connection with the reorganization of a municipality under this chapter, an initial board of directors shall be elected, the reorganization shall be deemed to be effective as of the time when the respective terms of office of the directors commence.

(2) Concurrently with the commencement of the terms of the directors:

(A) The office of mayor and the offices of the members of the city council in the case of the mayor-aldermanic form of government; the office of mayor and the offices of the other members of the board of commissioners in the case of the commission form of government; and the office of the mayor, the board of directors, and the city manager in the case of the city manager form of government shall become vacant;

(B) The statutory term of office of the city treasurer, city clerk, city attorney, city marshal, and recorder in cities of the second class shall cease and terminate. The incumbent of each of these offices shall remain in office subject to removal and replacement at any time by the city administrator, with the approval of the board of directors; and

(C)(i) Every other executive officer or executive employee of the city, including, without limiting the foregoing, the city purchasing agent and the members, hereinafter called "board members," of every other municipal board, authority, or commission, whether such office, employment, board, authority, or commission exists under statute or under any ordinance or resolution, whose official term of office or employment is fixed by statute, shall serve until the expiration of the term so fixed. Any of the executive officers or executive employees of the city and members of municipal boards, authorities, or commissions whose respective term of office is fixed by ordinance or resolution shall continue to serve until the expiration of the term so fixed or until the term is modified by ordinance or resolution. Thereafter, the position held by any such executive officer, employee, or board member shall be filled through appointment by the city administrator, with the approval of the board of directors, and the appointees shall hold their position at the will of the city administrator and the board of directors. However, definite terms may be provided for board members by ordinance.

(ii) Every executive officer, employee, or board member serving on the effective date of the reorganization whose office, employment, or board membership carries no fixed term created either by statute, ordinance, or resolution shall be subject to removal and replacement at any time by the board of directors.

(iii) The provisions of subdivision (a)(2)(C) of this section providing that the term of office of board members shall be held at the will of the city administrator and the board of directors shall have no application to the statutory term, if any, of the boards, authorities, or commissions listed in subdivision (b)(2)(A) of this section.

(b)(1) Reorganization under this chapter shall not affect any civil service plan in effect for any city employees at the time of reorganization, except that commissioners, as their terms expire, shall thereafter be appointed by the city administrator, with the approval of the board of directors, and any city organized under this chapter which has no civil service plan at the time of reorganization may adopt a plan pursuant to the provisions of any statute under which it otherwise qualifies.

(2)(A) Reorganization under this chapter shall not operate to abolish or terminate any of the following listed departments, commissions, authorities, or agencies of the city government:

(i) Waterworks commission existing under §§ 14-234-301 — 14-234-309;

(ii) Sewer committee existing under § 14-235-206;

- (iii) Airport commission existing under § 14-359-103;
- (iv) Housing authority existing under § 14-169-208;
- (v) Any board of civil service commissioners serving under § 14-49-201 et seq., § 14-50-201 et seq., or § 14-51-201 et seq.;
- (vi) Auditorium commission existing under § 14-141-104;
- (vii) Library trustees existing under § 13-2-502;
- (viii) City planning commission existing under § 14-56-404;
- (ix) Municipal court existing pursuant to other laws of the State of Arkansas; and

(x) Parking authority existing under §§ 14-304-101 — 14-304-106, 14-304-108 — 14-304-111, and 14-304-201 — 14-304-210 [repealed];

(B)(i) The reorganization shall not terminate, impair, or otherwise affect the official status, statutory tenure of office, if any, or powers of the persons serving as commissioners, committeemen, trustees, or members of any of the boards, authorities, commissions, agencies, or departments listed in subdivision (b)(2)(A) of this section, except as specifically provided by this chapter.

(ii) Whether consisting of the power to appoint or the power to confirm appointments or nominations, such power as may be vested in the mayor and the municipal council or in the mayor and other municipal legislative body immediately prior to the reorganization in respect to the filling of vacancies on the boards, authorities, commissions, agencies, or departments listed in this subdivision shall be transferred to, and vested in, the city administrator, with the approval of the board of directors. Each appointee designated by the city administrator, with the approval of the board of directors, to fill a vacancy on any of these bodies shall serve for the statutory term, if any, applicable to the vacancy or, if there is no statutory term, shall serve at the will of the board. However, each judgeship, whether a judgeship on a municipal court or a police court judgeship which on the effective date of the reorganization is on an elective basis, shall remain on an elective basis and shall not be subject to the appointive power of the city administrator and the board of directors. The boards, authorities, commissions, agencies, or departments listed in subdivision (b)(2)(A) of this section may be required by the board of directors, by ordinance duly adopted, to purchase all vehicles, equipment, materials, supplies, and services through a central municipal purchasing agent or department. The boards, authorities, commissions, agencies, or departments may be required to adopt and conform to the city personnel policies duly adopted by ordinance or resolution including, but not limited to, the amount and form of remuneration, job classification, and civil service plans.

14-48-107. Division of city into wards.

(a)(1) Following the adoption of the city administrator form of government in any city and prior to the special municipal election for the initial membership of the board of directors and the mayor, the governing body of the city, by ordinance, shall divide the city into four (4) wards with each ward being composed of contiguous territory and of substantially equal population and which shall be designated numbers one, two, three, and four.

(2) The designation of wards shall be made not more than twenty (20) days after the certification of results of the election to the Secretary of State.

(b)(1) If the governing body of the city fails to act within the time prescribed, then any elector of the city may present to the judge of the circuit court for the county in which the city is situated a petition requesting a designation of wards and asking for the appointment of three (3) commissioners to act in relation thereto.

(2)(A) Within five (5) days after receipt of the petition, the circuit judge shall appoint three (3) electors of the city to serve as a board of commissioners. It shall be this board's duty to divide the city into four (4) wards, with each ward being composed of contiguous territory and of substantially equal population, which shall be designated numbers one, two, three, and four.

(B)(i) The board of commissioners, by majority action, shall make a report which shall designate the boundaries of the wards and then file the report with the city clerk within fifteen (15) days after the date of their appointment.

(ii)(a) If no report is filed within this time, that board of commissioners shall be automatically dissolved, and the circuit judge, upon the filing of a petition reciting the failure of the board to act, shall appoint a new board of commissioners for the same purpose, with the same authority, and with the same limitations.

(b) In the event of failure of the second board to act, the process may be continued until a report is filed.

(c)(1) The board of directors of the city under the city administrator form of government shall review the apportionment among the wards after each federal census in the city or in the event there is an imbalance in population among the wards in excess of fifteen (15) percent.

(2)(A) The board of directors may reapportion the wards to maintain substantially equal population in each ward whenever they deem necessary.

(B) In the event a redesignation of ward boundaries results in director number one, two, three, or four residing outside the boundary of the ward which he is representing, he shall nonetheless continue in office until his regular term expires.

14-48-108. Calling of elections for directors and mayor.

(a)(1) Within ten (10) days after the designation of the four (4) wards, the Secretary of State shall, by proclamation, call special primary and general elections to be held in the municipality for the purpose of electing seven (7) directors and a mayor.

(2)(A) The primary election shall be held not less than sixty (60) days nor more than seventy-five (75) days from the date of the proclamation.

(B) The general election shall be held not less than seven (7) days nor more than fifteen (15) days after the primary election.

(b) These elections shall be called and conducted, and the results shall be determined and certified, as provided in § 14-48-109.

History. Acts 1967, No. 36, § 4; A.S.A. 1947, § 19-804.

14-48-109. Election of directors and mayor — Oath.

(a) Candidates for the office of director and mayor shall be nominated and elected as follows:

(1)(A)(i) A special election for the election of the initial membership of the board of directors and mayor shall be called by the Secretary of State as provided in § 14-48-108.

(ii) The proclamation shall be published through one (1) insertion in some newspaper having a bona fide circulation in the municipality. The publication shall be not less than sixty (60) days before the date of the primary election.

(iii) For the initial election of directors and mayor, any person desiring to become a candidate shall file within twenty (20) days following the date of the proclamation by the Secretary of State with the city clerk or recorder a statement of candidacy in the form and with the supporting signatures as provided in this section. In all other respects, the initial elections shall be governed by the provisions of this chapter for holding municipal elections.

(B)(i) Special elections to fill any vacancy under § 14-48-115 shall be called through a resolution of the board.

(ii) A proclamation of the election shall be signed by the mayor and published not less than sixty (60) days prior to the date of the election in some newspaper having a bona fide circulation in the municipality;

(2)(A) Candidates to be voted on at all elections to be held under the provisions of this chapter shall be nominated by primary election, and no names shall be placed upon the general election ballot except those selected in the manner prescribed in this chapter.

(B)(i) The primary elections, other than the initial primary, for those nominations for offices to be filled at the municipal general election shall be held on the fourth Tuesday preceding the municipal general election.

(ii)(a) The elections shall be under the supervision of the county board of election commissioners, and the election judges and clerks

appointed for the general election shall be the judges and clerks of the primary elections.

(b) Primary elections shall be held in the same places as are designated for the general election, so far as possible, and shall, so far as practicable, be conducted in the same manner as other elections under the laws of this state;

(3) Any person desiring to become a candidate for mayor or director shall file with the city clerk not less than sixty (60) days prior to the primary election by twelve o'clock noon a statement of his candidacy in substantially the following form:

"STATE OF ARKANSAS
COUNTY OF

I,, being first duly sworn, state that I reside at Street, City of, County and State aforesaid; that I am a qualified elector of said city and the ward in which I reside; that I am a candidate for nomination to the office of, to be voted upon at
(Mayor) (Director)

the primary election to be held on the day of 19, and I hereby request that my name be placed upon the official primary election ballot for nomination by such primary election for such office and I herewith deposit the sum of ten dollars (\$10.00), the fee prescribed by law;"

(4) The statement of candidacy and the petition for nomination supporting the candidacy of each candidate to be voted upon at any general or special election shall be filed with the city clerk or recorder not less than sixty (60) days before the election by twelve o'clock noon;

(5) The name of each candidate shall be supported by a petition for nomination, signed by at least fifty (50) qualified electors of the municipality, requesting the candidacy of the candidate. The petition shall show the residence address of each signer and carry an affidavit, signed by one (1) or more persons, in which the affiant or affiants shall vouch for the eligibility of each signer of the petition. Each petition shall be substantially in the following form:

"The undersigned, duly qualified electors of the City of, Arkansas, each signer hereof residing at the address set opposite his signature, hereby requests that the name of be placed on the ballot as a candidate for election to Position No. on the Board of Directors (or Mayor) of said City of at the election to be held in such city on the day of, 19 We further state that we know said person to be a qualified elector of said city and a person of good moral character and qualified in our judgment for the duties of such office;"

(6)(A) A petition for nomination shall not show the name of more than one (1) candidate.

(B) The name of the candidate mentioned in each petition, together with a copy of the election proclamation if the election is a

special election, shall be certified by the city clerk or recorder to the county board of election commissioners not less than thirty-five (35) days before the election unless the clerk or recorder finds that the petition fails to meet with the requirements of this chapter.

(C)(i) Whether the names of the candidates so certified to the county board of election commissioners are to be submitted at a biennial general election or at a special election held on a different date, the county board of election commissioners shall have general supervision over the holding of each municipal election.

(ii)(a) In this connection, the election board shall post the nominations, print the ballots, establish the voting precincts, appoint the election judges and clerks, determine and certify the results of the election, and determine the election expense chargeable to the city, all in the manner prescribed by law in respect to general elections; it is the intention of this chapter that the general election machinery of this state shall be utilized in the holding of all general and special elections authorized under this chapter.

(b) The result of the election shall be certified by the election board to the city clerk or recorder;

(7) The names of all candidates at the election shall be printed upon the ballot in an order determined by draw. If more than two (2) candidates qualify for an office, the names of all candidates shall appear on the ballot at the primary election;

(8)(A) If no candidate receives a majority of the votes cast in the primary, the two (2) candidates receiving the highest number of votes for mayor and for each director position to be filled shall be the nominees for those respective offices to be voted upon in the general election.

(B) If no more than two (2) persons qualify as candidates for the office of mayor or for any director position to be filled, no municipal primary election shall be held for these positions, and the names of the two (2) qualifying candidates for each office or position shall be placed upon the ballot at the municipal general election as the nominees for the respective positions. Primary elections shall be omitted in wards in which no primary contest is required.

(C) In any case in which only one (1) candidate shall have filed and qualified for the office of mayor or any director position, or if a candidate receives a clear majority of the votes cast in a primary election, that candidate shall be declared elected. The name of the person shall be certified as elected without the necessity of putting the person's name on the general municipal election ballot for the office;

(9) Any candidate defeated at any municipal primary election or municipal general election may contest it in the manner provided by law for contesting other elections.

(b) Each member of the board of directors, before entering upon the discharge of his duties, shall take the oath of office required by Arkansas Constitution, Article 19, Section 20.

History. Acts 1967, No. 36, §§ 5, 9; 1971, No. 439, § 1; A.S.A. 1947, §§ 19-805, 19-809; Acts 1989, No. 347, §§ 2, 3; 1989, No. 905, § 7; 1997, No. 879, §§ 1, 2.

Amendments. The 1997 amendment inserted "by twelve o'clock noon" in (a)(3) and at the end of (a)(4).

14-48-110. Board of directors and mayor generally.

(a)(1) The seven (7) directors elected by a city reorganized under this chapter shall be known and designated as the board of directors of the city.

(2) The board shall constitute the legislative and executive body of the city, subject to the powers of the mayor in § 14-48-111, and shall be vested with all powers and authority which, immediately prior to the effective date of the reorganization, were vested under then-existing laws, ordinances, and resolutions in the governing body of the city and in its board of public affairs subject to the powers of the city administrator in § 14-48-117.

(3) Except where expressly permitted under this chapter, the mayor or board member may not serve the city in any other capacity.

(b)(1) The positions upon the board shall, for election purposes, be permanently designated as positions, numbered respectively, one, two, three, four, five, six, and seven.

(2)(A) Each candidate for election to membership on the board shall specify the position for which he is running.

(B) The electors shall vote separately on the candidates for each position, and the position sought by each candidate shall be shown on the ballot.

(c)(1) Except in the instances where the mayor and directors are elected at special elections as provided in §§ 14-48-108 and 14-48-109, the mayor and members of the board shall be elected at the general elections held biennially for the election of state and county offices.

(2) Each such general election shall be utilized for the election of successors to the mayor and to those directors whose terms expire on December 31 following the election.

(d)(1) All primary, general, and special elections of the mayor and directors shall be nonpartisan, and the ballots shall show no party designation.

(2)(A) In all primary, general, and special elections, each candidate for the office of mayor or director shall be elected by the electors of the city as follows:

(i) The persons elected to fill director positions one, two, three, and four, respectively, shall be qualified electors of the respective wards and shall be elected by the qualified electors of the respective wards.

(ii) The persons elected to fill the position of mayor and director positions five, six, and seven, respectively, shall be qualified electors of the city and shall be elected by the qualified electors of the entire city.

(B) Neither the mayor nor a director shall be prohibited from holding successive terms of office.

(e)(1) The mayor and any director elected at a special election shall take office on the first Monday following the certification, as required in this chapter, of his election.

(2) The mayor and any director elected at a general election shall take office on January 1 following his election.

(f)(1) At any primary, general, or special election for the election of the mayor or any director, any adult person who has resided within the municipality for at least six (6) months and is qualified to vote at an election of county or state offices shall be deemed a qualified elector.

(2) Any person more than twenty-one (21) years of age possessing these same qualifications also shall be eligible to run for the office of mayor or director.

(g) When a city is reorganized under this chapter, the mayor and board will be divided into two (2) classes, and the tenure of office of those in each class shall be as follows:

(1) Director positions one, two, three, and four shall be Class Number One. Class 1 directors shall serve until and including December 31 following the first general election held after their term of office commences and until their successors have been elected and qualified. Thereafter, those in Class 1 shall serve four-year terms.

(2) The mayor and director positions five, six, and seven shall be Class Number Two. Class 2 directors shall serve until and including December 31 following the second general election held after their term of office commences, and until their successors have been elected and qualified. Thereafter, those in Class 2 shall serve four-year terms.

History. Acts 1967, No. 36, § 6; 1979, No. 69, § 1; A.S.A. 1947, § 19-806.

CASE NOTES

Powers of Board.

Where city had a regulation that a department head could not be discharged without notification in writing from the governing body of the city, the city admin-

istrator alone did not have authority to discharge the chief of the municipal fire department. *Sanders v. City of Ft. Smith*, 251 Ark. 494, 473 S.W.2d 182 (1971).

14-48-111. Mayor.

(a)(1) The mayor of a city having the city administrator form of government shall be recognized as the head of the city government for all ceremonial purposes and by the Governor for the purposes of military law.

(2) He shall sign on behalf of the city all written agreements, contracts, bonds, mortgages, pledges, indentures, conveyances, and other written instruments, the execution of which has been approved by the board of directors.

(3) He shall serve as chairman of the board and shall preside at regular and special meetings of the board, but he shall not have a vote on any matter coming before the board.

(b)(1) The mayor shall have the power of veto over all decisions made by the board except matters relative to city personnel.

(2) A veto by the mayor may be overridden by the affirmative vote of five (5) or more members of the board.

(c)(1) The mayor shall not be required to devote his full time to the office and shall receive a compensation or salary not to exceed the salary permitted municipal officers by the Constitution of this state, to be fixed by the board.

(2) When once fixed, the salary shall not be increased or diminished during the term for which he may have been elected.

(d) The mayor, before entering upon the discharge of his duties, shall take the oath of office required by Arkansas Constitution, Article 19, Section 20.

History. Acts 1967, No. 36, § 8; A.S.A. 1947, § 19-808.

Cross References. Veto of ordinances, etc., by mayor, § 14-48-120.

14-48-112. Assistant mayor.

(a)(1) The board of directors shall elect from its membership an assistant mayor who shall serve in that capacity for two (2) years or until his tenure of office as a director expires, whichever may be shorter.

(2) The assistant mayor shall not be prohibited from serving in that capacity for more than one (1) term.

(b)(1) The assistant mayor shall act as mayor during the absence or disability of the mayor.

(2)(A) If a vacancy in the office of mayor occurs, the assistant mayor shall perform the duties of mayor until a successor mayor is elected.

(B)(i) If the mayor shall be continuously absent or disabled for more than six (6) months, his office will automatically become vacant, and a successor mayor shall be elected.

(ii)(a) A certificate of the city clerk or recorder recorded in the record of the proceedings of the board as to the absence or disability of the mayor or as to any vacancy in the office of mayor may be relied upon by all persons dealing with the municipality as conclusive evidence of the assistant mayor's authority to assume the powers of the mayor.

(b)(1) Where any such certificate is so recorded, upon the termination of the absence or disability of the mayor and the resumption by him of his official duties as such, the city clerk or recorder shall record in the records of the board a separate certificate attesting that fact.

(2) This separate certificate shall show the date of the termination of absence or disability and resumption of duties.

History. Acts 1967, No. 36, § 8; A.S.A. 1947, § 19-808.

14-48-113. Acting mayor.

If both the mayor and assistant mayor should be absent or disabled from performing their duties, the board of directors may, by resolution, designate one (1) of its members as acting mayor, to serve during the absence or disability and no longer.

History. Acts 1967, No. 36, § 8; A.S.A. 1947, § 19-808.

14-48-114. Removal of mayor or directors.

(a) Any person holding the office of mayor and any person holding the office of member of the board of directors of any city organized under the provisions of this chapter shall be subject to removal from the office by the electors qualified to vote for a successor of the incumbent.

(b) The procedure to effect the removal of a person holding the office shall be as follows:

(1) When petitions requesting the removal of any such officer, signed by qualified electors equal in number to thirty-five percent (35%) of the total number of votes cast for all candidates for that office at the preceding general municipal election at which the office was on the ballot, are filed with the city clerk, the clerk shall determine the sufficiency of the petitions within ten (10) days from the date of the filing.

(2) If the petitions are deemed sufficient, the clerk shall certify them to the county board of election commissioners.

(3) The county board of election commissioners shall call a special election on the question and shall fix a date for holding it not less than thirty (30) days nor more than forty (40) days from the date of the certification of the petitions by the clerk.

(4) At the election, the question shall be submitted to the electors in substantially the following form:

“FOR the removal of from the office of
(name of officer)

..... ☐
(Mayor) (Director)

AGAINST the removal of from the
(name of officer)

office of ☐
(Mayor) (Director)

(5)(A) If a majority of the qualified electors voting on the question at the election shall vote for the removal of the officer, a vacancy shall exist in the office.

(B) If a majority of the qualified electors voting on the question at the election shall vote against the removal of the officer, the officer shall continue to serve during the term for which elected.

(c) No recall petition shall be filed against any officer until he shall have held his office for at least six (6) months.

History. Acts 1967, No. 36, § 17, A.S.A. 1947, § 19-817; Acts 1991, No. 49, § 1.

14-48-115. Mayor or director vacancy.

(a) In the case of a vacancy in the office of mayor or in the office of a member of the board of directors as a result of death, resignation, a recall election as provided for in § 14-48-114, or for any other reason, the board, by majority vote, shall appoint a person to fill the vacancy if the vacancy occurs less than six (6) months before the next general municipal election at which the remainder of the unexpired term shall be filled.

(b) If the vacancy occurs more than (6) months prior to the next general municipal election, a special election shall be called to fill the vacancy.

History. Acts 1967, No. 36, § 10; A.S.A. 1947, § 19-810.

14-48-116. Employment of city administrator.

(a) The initial board of directors shall employ a city administrator as promptly as possible after effecting the board's organization. A city administrator's employment shall be for an indefinite term. Thereafter, subject only to such interruptions as are unavoidable, a city administrator shall be maintained in the employ of the city. The appointment and continued employment by the board of a city administrator is mandatory.

(b)(1) It shall not be essential that the city administrator, at the time of his employment, be a qualified elector of the city or of the State of Arkansas or a resident of the city or of the State of Arkansas. However, the city administrator shall be a person found by the board to have special qualifications in respect to the administration of municipal affairs, and, during his employment, he shall reside in the city and devote his full time to the business of the city.

(2)(A) A member of the board may not be appointed city administrator or acting city administrator during the term for which he shall have been elected, nor within three (3) years following the expiration of that member's term of office as director.

(B) Notwithstanding the provisions of this section regarding residency requirements for city administrators, the city administrator of a city having a population of less than five thousand (5,000) persons, upon approval of a majority of the board of the city, may reside in an adjoining city during his employment as administrator.

(c) The city administrator shall receive a salary in such amount as may be fixed by the board.

(d) The board, on the vote of a majority of its elected membership, may terminate the city administrator's employment at any time, either for or without cause. However, the city administrator's employment

may not be terminated between the dates of January 1 and March 1 of the year following any general election in which members of the board are elected.

(e)(1) The city administrator shall furnish a fidelity bond, the premiums on which shall be paid by the city in such amount, in such form, and with such security as may be approved by the board.

(2) In no event shall the bond be less than twenty-five thousand dollars (\$25,000).

History. Acts 1967, No. 36, § 11, 1983, No. 159, § 1; A.S.A. 1947, §§ 19-811, 19-811.1.

Cross References. Self-Insured Fidelity Bond Program, § 21-2-701 et seq.

14-48-117. Powers and duties of city administrator.

The city administrator shall have the following powers and duties:

(1) To the extent that such authority is vested in him through ordinance enacted by the board of directors, he may supervise and control all administrative departments, agencies, offices, and employees;

(2) He shall represent the board in the enforcement of all obligations in favor of the city or its inhabitants which are imposed by law or under the terms of any public utility franchise upon any public utility;

(3) He may inquire into the conduct of any municipal office, department, or agency which is subject to the control of the board. In this connection, he shall be given unrestricted access to the records and files of any office, department, or agency and may require written reports, statements, audits, and other information from the executive head of the office, department, or agency;

(4) He shall nominate, subject to confirmation by the board, persons to fill all vacancies at any time occurring in any office, employment, board, authority, or commission to which the board's appointive power extends. He may remove from office all officials and employees including, but not limited to, members of any board, authority, or commission who, under existing or future laws, whether applicable to cities under the aldermanic, manager, or commission form of government, may be removed by the city's legislative body. Removal by the city administrator shall be approved by the board. Where, under the statute applicable to any specific employment or office, the incumbent may be removed only upon the vote of a specified majority of the city's legislative body, the removal of the person by the city administrator may be confirmed only upon the vote of a specified majority of the board members. However, the provisions of this subdivision shall have no application to offices and employments controlled by any civil service or merit plan lawfully in effect in the city. Moreover, in cities maintaining municipal courts or police courts under the authority of any statute, the municipal judge, police judge, and clerk of any such court shall be elected and appointed in the manner prescribed by law;

(5)(A) To the extent that, and under such regulations as, the board may by ordinance prescribe:

(i) He may contract for and purchase, or issue purchase authorizations for, supplies, materials, and equipment for the various offices, departments, and agencies of the city government, and he may contract for, or authorize contracts for, services to be rendered to the city or for the construction of municipal improvements. In this connection, the board shall by ordinance establish a maximum amount, and each contract, purchase, or authorization exceeding the amount so established shall be effected after competitive bidding as required in § 14-48-129;

(ii) He may approve for payment, out of funds previously appropriated for that purpose, or disapprove any bills, debts, or liabilities asserted as claims against the city. The board shall by ordinance establish, in that connection, a maximum amount, and the payment or disapproval of each bill, debt, or liability exceeding that amount shall require the confirmation of the board, or of a committee of directors created by the board for that purpose;

(iii) He may sell or exchange any municipal supplies, materials, or equipment. However, the board shall by ordinance establish a maximum value above which no item or lot designated to be disposed of as one (1) unit of supplies, materials, or equipment shall be sold or exchanged without competitive bidding unless the city administrator shall certify in writing that, in his opinion, the fair market value of the item or lot is less than the amount established by the ordinance as prescribed;

(iv) He may transfer to any office, department, or agency or he may transfer from any office, department, or agency to another office, department, or agency any materials and equipment.

(B) For the purpose of assisting the city administrator in transactions arising under subdivisions (5)A)(i), (ii), and (iii) of this section, the board may appoint one (1) or more committees to be selected from its membership. In the alternative, the board may create one (1) or more offices or departments to be composed of personnel approved by the city administrator. If, for such purposes, the board shall create any new office or department, the person appointed to fill the office or to head the department shall be responsible to the city administrator and act under his direction;

(6) He shall prepare the municipal budget annually and submit it to the board for its approval or disapproval and be responsible for its administration after adoption;

(7) He shall prepare and submit to the board, within sixty (60) days after the end of each fiscal year, a complete report on the finances and administrative activities of the city during the fiscal year;

(8) He shall keep the board advised of the financial condition and future needs of the city and make such recommendations as to him may seem desirable;

(9) He shall sign all municipal warrants when authorized by the board to do so;

(10) He shall have all powers, except those involving the exercise of sovereign authority, which, under statutes applicable to municipalities

under the aldermanic form of government or under ordinances and resolutions of the city in effect at the time of its reorganization, may be vested in the mayor;

(11) He shall perform such additional duties and exercise such additional powers as may by ordinance be lawfully delegated to him by the board;

(12) He shall be the executive officer of the boards of improvement and shall, under the direction of those boards, supervise all work done by them.

History. Acts 1967, No. 36, § 11;
A.S.A. 1947, § 19-811.

CASE NOTES

Discharge of Department Heads.

Where city had a regulation that a department head could not be discharged without notification in writing from the governing body of the city, the city admin-

istrator alone did not have authority to discharge the chief of the municipal fire department. *Sanders v. City of Ft. Smith*, 251 Ark. 494, 473 S.W.2d 182 (1971).

14-48-118. Acting city administrator.

(a)(1) If the city administrator is absent from the city or is unable to perform his duties, if the board of directors suspends the city administrator, or if there is a vacancy in the office of the city administrator, the board may by resolution appoint an acting city administrator to serve until the city administrator returns, until his disability or suspension ceases, or until another city administrator is appointed and qualifies, as the case may be.

(2) The board may suspend or remove an acting city administrator at any time.

(b)(1) The board, in the exercise of its discretion, may determine whether the acting city administrator shall furnish bond.

(2) If in any instance the board requires the acting city administrator to furnish bond, the premiums shall be paid by the city. The bond, in respect to form, amount, and security, shall be subject to the approval of the board.

(c) The acting city administrator shall receive a reasonable compensation to be fixed by the board.

History. Acts 1967, No. 36, § 11;
A.S.A. 1947, § 19-811.

14-48-119. Election of municipal judge.

(a) In any city in this state having a city administrator form of government and having the office of municipal judge, elections for that office shall be held at the same time as the elections for other city officers.

(b) A term of office of any municipal judge at the time this form of government becomes effective shall not be affected. The judge shall continue to hold office until the next municipal election after his term expires and until his elected successor qualifies and assumes office on January 1 of the year succeeding the date of the election.

History. Acts 1967, No. 36, § 7; A.S.A. 1947, § 19-807.

14-48-120. Meetings of board of directors.

(a)(1) A majority of the elected membership of the board of directors shall constitute a quorum for the transaction of business.

(2) Except where otherwise provided by law, an affirmative vote of four (4) or more members shall represent the action of the board, and a like vote shall be required to suspend the rules.

(b) The board shall meet twice during each calendar month, and, until otherwise provided by ordinance, the meetings shall be held on the first and third Monday evenings of each calendar month, unless that day is a legal holiday, in which case the meeting shall be held on the following evening.

(c)(1) Special meetings may be called by a majority of the membership of the board.

(2) The board may, by ordinance, establish the procedure for calling and giving notice of special meetings.

(d) All regular and special meetings of the board shall be open to the public.

(e)(1) Every motion, resolution, and ordinance adopted by the board, if approved by the mayor, shall be signed by the mayor and attested by the city clerk.

(2) Any ordinance, resolution, or motion for which the mayor has the power of veto, and which is enacted or adopted over the veto of the mayor as authorized in this section, shall be signed by the assistant mayor and attested by the city clerk.

(f) All laws in effect on February 2, 1967, regarding the proceedings of the city council of a city operating under the mayor-aldermen form of government and not inconsistent with the provisions of this chapter, including those laws prescribing the procedure for the adoption, enactment, and publication of ordinances and resolutions, shall govern the proceedings of the board provided for in this section.

(g)(1)(A) All ordinances, resolutions, and motions adopted by the board at a regular or special meeting shall be delivered to the mayor within forty-eight (48) hours after the adoption thereof.

(B) The mayor shall have a period of three (3) days from the date of the receipt of any ordinance, resolution, or motion adopted by the board to approve or veto it. If he shall fail to approve or veto it within that period, it shall become law without his signature.

(2)(A) Any ordinance, resolution, or motion enacted or adopted by the board which is vetoed by the mayor may be enacted over the veto of

the mayor by an affirmative vote of five (5) or more members of the board.

(B) When any ordinance, resolution, or motion of the board is vetoed by the mayor, it shall automatically be on the agenda for consideration of the board at the next regular meeting of the board and may be considered at a special meeting called in the manner authorized herein.

(h)(1) Each member of the board shall receive compensation for each regular meeting of the board which he attends but shall receive no compensation for attending a special meeting of the board.

(2) The compensation for each meeting shall be set by the board, but shall not exceed one-twenty-fourth of twenty percent ($\frac{1}{24}$ of 20%) of the compensation permitted municipal officers per annum by the Constitution of this state.

(i) The board may hold agenda meetings at such times, under such circumstances, and on such conditions as the board may prescribe for the purpose of informing themselves of the business and affairs of the city. However, no official action of the board shall be taken at such meetings.

(j) The board shall adopt rules of order to govern the deliberations and meetings of the board.

(k) Any director who fails to attend five (5) consecutive regular meetings of the board, or who fails to attend fifty percent (50%) of the regular meetings of the board held during a calendar year while he is a qualified member of the board, shall be deemed to have resigned. A vacancy shall then exist in that position to be filled as provided in § 14-48-115.

History. Acts 1967, No. 36, § 9; A.S.A. 1947, § 19-809.

CASE NOTES

Discharge of Employees.

Where city administrator met in executive session with city board of directors and announced he wished to discharge the fire chief, but the notification was sent by the city administrator without being seen

by the board of directors or signed by them, the discharge was not in compliance with subsections (c) and (g). *Sanders v. City of Ft. Smith*, 251 Ark. 494, 473 S.W.2d 182 (1971).

14-48-121. Initiative and referendum.

(a) The initiative and referendum laws of this state are applicable to cities reorganized under this chapter.

(b) The number of signatures required upon any petition shall be computed upon the total vote cast for mayor at the preceding general election for mayor.

History. Acts 1967, No. 36, § 16; A.S.A. 1947, § 19-816.

14-48-122. Budgets and appropriations.

(a) The approval of the budget by the board of directors shall amount to an appropriation, for the purposes of the budget, of the funds which are lawfully applicable to the different items therein contained.

(b) The board may alter or revise the budget from time to time, and unpledged funds appropriated by the board for any specific purpose may by subsequent action of the board be appropriated to another purpose, subject to the following exceptions:

(1) Funds resulting from taxes levied under statute or ordinance for a specific purpose may not be diverted to another purpose; and

(2) Appropriated funds may not be diverted to another purpose where any creditor of the municipality would be prejudiced thereby.

History. Acts 1967, No. 36, § 12;
A.S.A. 1947, § 19-812.

14-48-123. Annual audit.

The board of directors shall have the financial affairs of the city audited annually by an independent certified public accountant who is not otherwise in the service of the city.

History. Acts 1967, No. 36, § 12;
A.S.A. 1947, § 19-812; Acts 1987, No. 220,
§ 1.

14-48-124. Creation of new departments, etc.

(a)(1) The board of directors may from time to time, by ordinance, create, reorganize, or abolish, except as provided in § 14-48-106, any municipal departments, offices, employments, boards, authorities, commissions, and agencies and fix the term of employment and compensation of each appointee.

(2) The city administrator, with the approval of the board, shall appoint the personnel to serve in the departments, offices, employments, boards, authorities, commissions, and agencies.

(b)(1) The board also in the exercise of its discretion, by ordinance, may consolidate the office of the city treasurer with the office of the city clerk or such other department, office, or position as the board, by ordinance, may charge with the responsibility of administering the financial affairs of the city.

(2) The board may delegate all of the duties of the city treasurer to the person holding such office or position in the city and fix the term and compensation of the appointee.

(3) With the approval of the board, the city administrator may fill this consolidated office by appointment.

History. Acts 1967, No. 36, § 12;
A.S.A. 1947, § 19-812.

14-48-125. Appointees generally.

Subject to the exceptions contained in § 14-48-102, every person appointed by the board of directors to any municipal office, employment, position, or to membership on any board, authority, or commission shall serve for such time and shall receive such compensation as the board may, by ordinance, fix and determine.

History. Acts 1967, No. 36, § 12;
A.S.A. 1947, § 19-812.

14-48-126. Qualifications of appointees.

(a) In the exercise by the board of directors of its authority in respect to the filling of vacancies on municipal boards, authorities, and commissions, only those qualified electors of the city found by the board to possess the necessary qualifications shall be appointed or confirmed.

(b)(1) In filling vacancies on any municipal board, authority, or commission, unless the statute applicable to the position forbids the appointment thereto of a city employee, the city administrator, if otherwise qualified, shall be an eligible appointee.

(2) The city administrator, however, shall not be, ex officio, a member of any municipal board, authority, or commission.

History. Acts 1967, No. 36, § 7; A.S.A.
1947, § 19-807.

14-48-127. Bond of officers and employees.

All officers and employees of a city reorganized under this chapter, excepting the city administrator whose bond requirement is controlled by § 14-48-116, may be required to make bond in such amount, in such form, and with such security as may meet the approval of the board of directors.

History. Acts 1967, No. 36, § 13; A.S.A.
1947, § 19-813.

Cross References. Self-Insured Fidelity Bond Program, § 21-2-701 et seq.

14-48-128. Prohibited actions by officers or employees.

(a)(1) No member of the board of directors nor any officer or employee appointed in any city shall have an interest in any contract or job for work or materials, or the profits thereof, or service to be furnished or performed for the city.

(2) No officer or employee shall have an interest in any contract or job for work or materials, or the profits thereof, or service to be furnished or performed for any person, firm, or corporation operating any public transportation service, gas works, waterworks, electric light or power plants, telegraph line, telephone exchange, or other public utility within the territorial limits of the city.

(3)(A) No officer or employee shall accept or receive, directly or indirectly, any frank, pass, free ticket, or free service from any person,

firm, or corporation operating within the territorial limits of the city any public transportation service, gas works, waterworks, electric light or power plant, heating plant, telephone exchange, telegraph line, or other business acting or operating under a public franchise of the city; nor shall he accept or receive, directly or indirectly, from any such person, firm, or corporation, or its agents, any other service upon terms more favorable than those granted to the public generally.

(B) The prohibition of free transportation shall not apply to police officers, or fire fighters in uniform, nor shall any free service to the city officials heretofore provided by franchise or ordinance be affected by this section.

(b) Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be fined in a sum not less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000), and every such contract or agreement shall be void.

History. Acts 1967, No. 36, § 12;
A.S.A. 1947, § 19-812.

14-48-129. Competitive bidding required.

(a) Before making any purchase of, or contract for, any supplies, materials, or equipment, and before obligating the city under any contract for the performance of services or for the construction of municipal improvements where the anticipated cost to the city of the transaction exceeds the maximum amount established by the board of directors under the authority of § 14-48-117, opportunity for competitive bidding shall be given under such rules and regulations as the board may by ordinance prescribe, and the contract shall be consummated only on a bid approved by the city administrator and by the board.

(b) The board, by ordinance, may waive the requirement of competitive bidding in exceptional situations where this procedure is not feasible. However, such exceptional situations being lacking, the board may not except any particular contract, purchase, or sale from the requirement of competitive bidding.

(c) All purchase and sale records of the city shall be open to public inspection.

History. Acts 1967, No. 36, § 12;
A.S.A. 1947, § 19-812.

14-48-130. Public utility franchises, etc.

Every ordinance or resolution granting any public utility franchise or granting the right to occupy the streets, highways, bridges, or other public places in the city for any purpose shall be completed in the form in which it is finally passed. It shall remain on file with the city clerk for public inspection at least one (1) week before the final passage or adoption thereof.

History. Acts 1967, No. 36, § 14;
A.S.A. 1947, § 19-814.

14-48-131. Improvement districts.

(a)(1) The board of directors elected under the provisions of this chapter shall constitute the respective boards of improvement for any and all improvement districts existing or created in any city operating under the provisions of this chapter and shall discharge and perform all duties required of any board of any improvement district under the provisions of the laws of this state dealing with improvement districts. However, the directors shall receive no compensation as members of such boards.

(2) It shall not be necessary for the board of directors who shall constitute such a board to be owners of real property or, where the district does not embrace the whole of the city, to reside in the improvement district.

(b)(1)(A) The board of directors, where districts have been created and are in existence when they qualify and enter upon the discharge of their duties as such a board of the city, in addition to the oath required as a board of directors of the city, shall each, as a member of the board of improvement, take the oath of office required by Arkansas Constitution, Article 19, § 20. Each member shall also affirm that he will not, directly or indirectly, have an interest in any contract made by the board of which he is a member.

(B)(i) This oath shall be made for each separate district.

(ii) The oath shall be filed in the office of the city clerk.

(2) When an improvement district is formed after the board of directors has qualified, each director, immediately upon the formation of the improvement district, shall take and file the oath required by this section as a member of that board of improvement.

(c)(1) When the directors have taken the oath provided for by this section, the terms of office of all members of improvement boards in the city shall cease and determine. They shall cause to be delivered to the board of directors, as their successors, all records, papers, and contracts, as well as everything belonging to the improvement districts in their possession and under their control.

(2) These items shall be kept separate from the records, papers, contracts, and property of the city.

(d)(1)(A) The board of directors, in lieu of serving as the board of commissioners for any improvement district, may appoint three (3) electors of the city to act as commissioners.

(B)(i) Each of these commissioners shall take the oath of office required by Arkansas Constitution, Article 19, Section 20, and shall also swear that he shall not, directly or indirectly, have an interest in any contract made by the board and that he will well and truly assess all benefits resulting from the improvement and all damages caused thereby.

(ii) Any commissioner failing to take the oath within thirty (30) days after his appointment shall be deemed to have declined, and his place shall be filled by the board of directors.

(C) The commissioners shall select one (1) of their number as chairman, and a majority shall constitute a quorum.

(2) The board of directors may remove any member of the board of commissioners.

(3) The board of directors may provide for the compensation of commissioners at a rate not to exceed ten dollars (\$10.00) for each day spent attending meetings of the board of commissioners. However, a board of commissioners shall not be compensated for more than two (2) meetings in any calendar month.

(e)(1) The records, proceedings, moneys, and revenues of each improvement district shall be kept separate and distinct from each other and separate and distinct from the records, proceedings, moneys, and revenues of the city.

(2) The city clerk shall be ex officio secretary and collector and the city treasurer or finance officer shall be ex officio treasurer of each and every improvement district, subject, however, to the right of the board, if it shall be deemed best, to designate and appoint some person other than the city clerk as secretary or collector and some person other than the city treasurer or finance officer as treasurer.

(f)(1) The board for each and every improvement district shall prepare quarterly a detailed and itemized statement of all receipts and expenditures of each district with proper vouchers for all payments and cause it to be filed with the clerk of the circuit court.

(2)(A) Any taxpayer may, within six (6) months, file exceptions to the report in the chancery court.

(B)(i) The chancery court shall proceed, after ten (10) days' notice given to the chairman of the board of improvement for the district, to examine the exceptions to the report and account and disallow any and all unjust, illegal, and improper charges and credits.

(ii) From any final judgment or order of the chancery court in respect thereto, the aggrieved parties shall have the right of appeal to the Supreme Court, as in other cases.

History. Acts 1967, No. 36, § 15;
A.S.A. 1947, § 19-815.

CHAPTER 49

CIVIL SERVICE FOR CITIES OF 75,000 OR OVER

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. BOARD OF CIVIL SERVICE COMMISSIONERS.
3. CIVIL SERVICE SYSTEM.

Cross References. Civil service for police and fire departments, § 14-51-101 et seq.

RESEARCH REFERENCES

C.J.S. 62 C.J.S., Mun. Corp., §§ 469, 488.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

14-49-101. Definitions.

14-49-102. Applicability.

SECTION.

14-49-103. Penalty.

Preambles. Acts 1937, No. 322 contained a preamble which read: "Whereas, cities having a population of more than 75,000 inhabitants, own, operate and maintain hospitals, airports, libraries, health departments, electrical departments, engineering departments, street departments, weights and measures departments, collection departments, sewer departments, purchasing departments, parks and sanitation departments and waterworks, and employ hundreds of people who work in said departments, some of them requiring years of experience to be-

come sufficiently skilled to properly do the necessary work required of them; and

"Whereas, such employees are usually employed in accordance with political expediency rather than merit; and,

"Whereas, it is for the best interest of such cities that applicants for positions with said city, and employees working for the city, be employed and discharged according to their merits, and the necessity of the city for their services...."

Effective Dates. Acts 1937, No. 322, § 19: Mar. 25, 1937.

Acts 1951, No. 386, § 2: Mar. 20, 1951.

14-49-101. Definitions.

As used in this chapter, unless the context otherwise requires, "board," "commission," or "commissioners" means the board of civil service commissioners, as provided for in § 14-49-201 et seq.

History. Acts 1937, No. 322, § 15; A.S.A. 1947, § 19-1315.

14-49-102. Applicability.

Every city in this state shall be entitled to operate under this chapter whenever any federal census taken shows that the city has attained a population of seventy-five thousand (75,000) or over.

History. Acts 1937, No. 322, § 1; A.S.A. 1947, § 19-1301.

14-49-103. Penalty.

Any person violating any part of this chapter, upon conviction, shall be punished as for a misdemeanor.

History. Acts 1937, No. 322, § 18; A.S.A. 1947, § 19-1317.

Cross References. Misdemeanors, § 5-1-107.

SUBCHAPTER 2 — BOARD OF CIVIL SERVICE COMMISSIONERS

SECTION.

- 14-49-201. Appointment of members.
- 14-49-202. Persons excepted.
- 14-49-203. Organizational meeting.
- 14-49-204. Chairman of commission.
- 14-49-205. Secretary of board.
- 14-49-206. Attorney for commission.

SECTION.

- 14-49-207. Regular meetings, etc.
- 14-49-208. Quorum for business.
- 14-49-209. Investigation powers.
- 14-49-210. Salary of commissioners.
- 14-49-211. Removal of commissioner.
- 14-49-212. Vacancies on board.

Cross References. Civil service board for police and fire departments, § 14-51-201 et seq.

Preambles. Acts 1937, No. 322 contained a preamble which read: "Whereas, cities having a population of more than 75,000 inhabitants, own, operate and maintain hospitals, airports, libraries, health departments, electrical departments, engineering departments, street departments, weights and measures departments, collection departments, sewer departments, purchasing departments, parks and sanitation departments and waterworks, and employ hundreds of people who work in said departments, some of them requiring years of experience to become sufficiently skilled to properly do the necessary work required of them; and

"Whereas, such employees are usually

employed in accordance with political expediency rather than merit; and,

"Whereas, it is for the best interest of such cities that applicants for positions with said city, and employees working for the city, be employed and discharged according to their merits, and the necessity of the city for their services...."

Effective Dates. Acts 1937, No. 322, § 19: Mar. 25, 1937.

Acts 1943, No. 17, § 2: Feb. 3, 1943. Emergency clause provided: "This act being necessary for the immediate protection of the public peace, welfare and safety, an emergency is hereby declared and the same shall be in full force and effect from and after its passage and approval."

Acts 1951, No. 386, § 2: Mar. 20, 1951.

14-49-201. Appointment of members.

(a) The city council or governing body in cities which, according to the last federal census taken, have a population of seventy-five thousand (75,000) or over shall, by ordinance, name three (3) citizens of their respective cities as a board of civil service commissioners.

(b) The commissioners shall hold office as follows:

(1) One until the first Monday in April of the second year after his appointment;

(2) One until the first Monday in April of the fourth year after his appointment; and

(3) One until the first Monday in April of the sixth year after his appointment.

History. Acts 1937, No. 322, § 1;
A.S.A. 1947, § 19-1301.

CASE NOTES

De Facto Commissioners.

Where plaintiffs filed representative suit in behalf of all city police officers of Little Rock whose employment was cut off by service in the war, against members of Little Rock Civil Service Commission and asked that commissioners be permanently enjoined from acting as commissioners on theory that 1933 act authorized cities of first class to create a civil service commission for police officers and fire fighters only, and 1937 act authorized cities of more than 75,000 to create a second civil service commission for employees other

than fire fighters and police officers, that hence members of the commission had violated law prohibiting members from holding more than one political office, court properly sustained demurrer to the complaint, as even though plaintiffs were right in their theory that commissioners were serving on two commissions, the defendants would still be de facto commissioners, and equity had no authority to decide whether defendants were also de jure officers. *Smith v. Little Rock Civil Serv. Comm'n*, 214 Ark. 765, 218 S.W.2d 366 (1949) (decision prior to § 14-51-201).

14-49-202. Persons excepted.

(a) No person on the commission shall hold or be a candidate for any office or public trust under any national, state, county, or municipal government, or school district, or be connected in any way in any official capacity with any political party or organization.

(b) No person as enumerated in this section shall be eligible for a place on the board who, at the time of his election, shall hold any such office.

History. Acts 1937, No. 322, § 1;
A.S.A. 1947, § 19-1301.

14-49-203. Organizational meeting.

(a) The commissioners named as provided in this chapter shall meet and organize.

(b) The commissioner who shall be elected for a term of two (2) years shall act as chairman.

History. Acts 1937, No. 322, § 2;
A.S.A. 1947, § 19-1302.

14-49-204. Chairman of commission.

(a)(1) The chairman of the commission for each biennial period shall be the member whose term first expires.

(2) The member of the commission whose term shall next expire shall serve as chairman during the last two (2) years of his term.

(b) The chairman shall preside over all meetings of the commission and be its executive officer.

(c) In the absence of the chairman, the board shall elect one (1) of its number to act instead of the chairman during the absence of the chairman.

History. Acts 1937, No. 322, §§ 1, 2;
A.S.A. 1947, §§ 19-1301, 19-1302.

14-49-205. Secretary of board.

- (a) The board shall elect one (1) of its members as secretary.
- (b) The secretary shall:
 - (1) Keep the books and records of the board;
 - (2) Conduct the correspondence of the board;
 - (3) Report the evidence at all trials;
 - (4) Act as clerk when the board shall constitute a trial court; and
 - (5) Perform any other duties that may be ordered by the board.

History. Acts 1937, No. 322, § 1;
A.S.A. 1947, § 19-1301.

14-49-206. Attorney for commission.

The city attorney shall act as attorney for the commission provided for in this chapter in all trials and other legal transactions of the commission.

History. Acts 1937, No. 322, § 1; 1943,
No. 17, § 1; 1951, No. 386, § 1; A.S.A.
1947, § 19-1301.

14-49-207. Regular meetings, etc.

The city council or other governing body, as the case may be, shall:

- (1) Provide suitable rooms for the board to hold meetings; and
- (2) Allow all reasonable supplies; and
- (3) Permit use of public buildings for holding examinations by the board.

History. Acts 1937, No. 322, § 2;
A.S.A. 1947, § 19-1302.

14-49-208. Quorum for business.

Two (2) of the commission members shall constitute a quorum to transact business.

History. Acts 1937, No. 322, § 1;
A.S.A. 1947, § 19-1301.

14-49-209. Investigation powers.

(a) In any investigation conducted by the commission provided for in this chapter, the commission shall have the power of subpoena, to require the attendance of any witness and the production of any papers or records pertinent to the investigation, and the power to administer oaths to the witnesses.

(b) To punish for contempt the nonattendance of witnesses, or the failure to produce books or papers, or misbehavior of any person during the investigation, the commission may impose a fine not to exceed fifty dollars (\$50.00) for each offense.

History. Acts 1937, No. 322, § 10;
A.S.A. 1947, § 19-1310.

14-49-210. Salary of commissioners.

The salary of the commissioners shall be paid by the city and shall be fixed by the city council or other governing body of the city.

History. Acts 1937, No. 322, § 1;
A.S.A. 1947, § 19-1301.

14-49-211. Removal of commissioner.

(a) The city council or the governing body, by two-thirds ($\frac{2}{3}$) vote may remove any of the commissioners during his term of office for cause.

(b) The vacancy thereby created shall be filled as provided in this chapter.

History. Acts 1937, No. 322, § 1;
A.S.A. 1947, § 19-1301.

14-49-212. Vacancies on board.

(a) When a vacancy shall occur on the board by death, resignation, expiration of the term of office, or in any other manner, the vacancy shall be filled by the other members of the commission within thirty (30) days from the time the vacancy shall have occurred.

(b) Vacancies occurring during the term of office of any commissioner shall be filled for the remainder of the term.

History. Acts 1937, No. 322, § 1;
A.S.A. 1947, § 19-1301.

SUBCHAPTER 3 — CIVIL SERVICE SYSTEM

SECTION.

- 14-49-301. Employees not covered.
- 14-49-302. Temporary employees.
- 14-49-303. City clerk's employees included.
- 14-49-304. Rules and regulations generally.
- 14-49-305. Departmental rules and regulations.
- 14-49-306. Political activity prohibited.
- 14-49-307. Employees and salaries fixed.

SECTION.

- 14-49-308. Certification for compensation.
- 14-49-309. Examinations.
- 14-49-310. Suspension of competition.
- 14-49-311. Suspension, discharge, or reduction in rank or compensation.
- 14-49-312. Reductions, reinstatements, or transfers in personnel.
- 14-49-313. Political discrimination prohibited.

Preambles. Acts 1937, No. 322 contained a preamble which read: "Whereas, cities having a population of more than 75,000 inhabitants, own, operate and maintain hospitals, airports, libraries, health departments, electrical departments, engineering departments, street departments, weights and measures departments, collection departments, sewer departments, purchasing departments, parks and sanitation departments and waterworks, and employ hundreds of people who work in said departments, some of them requiring years of experience to become sufficiently skilled to properly do the necessary work required of them; and

"Whereas, such employees are usually employed in accordance with political expediency rather than merit; and,

"Whereas, it is for the best interest of such cities that applicants for positions with said city, and employees working for the city, be employed and discharged according to their merits, and the necessity of the city for their services...."

Effective Dates. Acts 1937, No. 322, § 19: Mar. 25, 1937.

Acts 1941, No. 43, § 3: Feb. 13, 1941.

Acts 1943, No. 17, § 2: Feb. 3, 1943. Emergency clause provided: "This act being necessary for the immediate protection of the public peace, welfare and safety, an emergency is hereby declared and the same shall be in full force and effect from and after its passage and approval."

Acts 1951, No. 386, § 2: Mar. 20, 1951.

Acts 1957, No. 152, § 3: Mar. 6, 1957. Emergency clause provided: "It is hereby found and determined by the General Assembly that a number of city employees affected by this Act are presently excluded from the benefits of the civil service system of such cities and that the immediate passage of this Act is necessary in order to include such employees within the benefits and protections of such a system. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved March 6, 1957.

14-49-301. Employees not covered.

(a) This chapter shall not apply to any officer, servant, employee, or attorney of the city who is elected by vote of the people of their respective cities.

(b)(1) This chapter shall not apply to the following employees of the city:

- (A) Secretary to the mayor;
- (B) Assistant secretary to the mayor;
- (C) Secretary to the municipal courts and clerks;
- (D) Assistant city attorneys;
- (E) Secretary to city attorneys;
- (F) Members of the police and fire departments of cities;
- (G) City purchasing agent;
- (H) All employees of the city library;
- (I) Superintendent of the city hospital;
- (J) All members of honorary boards;
- (K) All members of the municipal waterworks, and the commissioners thereof;
- (L) All officers and employees of the sewer department;
- (M) Members of the board of public affairs;
- (N) Special attorneys that may be employed by the city from time to time; and

(O) Public accountants that may be employed for special work by the city.

(2) These employees of the city shall be appointed as they were before the passage of this act.

History. Acts 1937, No. 322, § 1; 1943, No. 17, § 1; 1951, No. 386, § 1; A.S.A. 1947, § 19-1301.

Publisher's Notes. In reference to the term "the passage of this act," Acts 1937, No. 322 was signed by the Governor on March 25, 1937, and became effective on

June 10, 1937. (Emergency clause invalid).

Meaning of "this act". Acts 1937, No. 322, as amended, codified as § 14-49-101 et seq., § 14-49-201 et seq., and § 14-49-301 et seq.

14-49-302. Temporary employees.

The mayor of the city shall have authority to employ and discharge common laborers for work that is temporary. He shall have the authority to employ accountants and auditors for the purpose of auditing the city's books, or the books of the departments thereof, and special attorneys.

History. Acts 1937, No. 322, § 1; A.S.A. 1947, § 19-1301.

14-49-303. City clerk's employees included.

In addition to the city employees originally affected by and brought within the provisions of this chapter, providing for the establishment of a civil service system in certain cities, the employees of the city clerks' office in these cities shall, from the passage of this act, be affected by, and rendered subject to, all of the provisions, rights, and benefits of this chapter as though originally provided for therein.

History. Acts 1957, No. 152, § 1; A.S.A. 1947, § 19-1318.

Publisher's Notes. In reference to the term "the passage of this act," Acts 1957, No. 152 was signed by the Governor and became effective on March 5, 1957.

Acts 1957, No. 152, § 2, provided that no employee affected by this section at the

time of its passage would be subject to an examination, except for promotion or advancement, but would retain his current position, subject to all other provisions of § 14-49-101 et seq.

Meaning of "this act". See note to § 14-49-301.

14-49-304. Rules and regulations generally.

(a)(1) The board provided for in this chapter shall prescribe, amend, and enforce rules and regulations governing the employees, except those excepted in this chapter, of their respective cities.

(2) The rules and regulations shall have the force and effect of law.

(3) The board shall keep a record of its examinations and shall investigate the enforcement and effect of this chapter and the rules as provided for in this section.

(b) These rules shall provide for:

(1) The qualification of each applicant for appointment to any position affected by this chapter;

(2) Testing, by open competitive examinations, the relative fitness of applicants for the positions;

(3)(A) Public advertisements of all examinations by publication of notice in some newspaper having a bona fide circulation in the city and by posting of notice at the city hall at least ten (10) days before the date of the examination.

(B) The examinations shall be held on the first Monday in April and the first Monday in October of each year and more often if necessary under the rules and regulations as may be prescribed by the board;

(4)(A) The creation of eligible lists for each position of employment in the city in which shall be entered the names of the successful applicants in the order of their standing in the examination.

(B)(i) All lists for appointments or promotions as certified by the board shall be and remain in force and effect for a period of one (1) year from the date thereof.

(ii) At the expiration of this period, all right of priority under the lists shall cease;

(5)(A) The rejection of applicants or eligibles who fail to comply with reasonable requirements of the board in regard to age, sex, physical condition, or who have attempted fraud or deception in connection with the examination.

(B) The board may adopt proper rules and regulations for a suitable physical examination of all applicants;

(6)(A)(i) Certification to the department head of the three (3) standing highest on the eligibility list for appointment for that rank of service and the department head to select for appointment one (1) of the three (3) certified to him and notify the commission thereof; and

(ii) The promotion or advancement of the one (1) standing highest on the eligibility list for that rank of service.

(B) The governing body may adopt, by ordinance, the following provisions for employment or advancement in lieu of subdivision (A) of subsection (b)(6):

(i) Certification to the department head of the five (5) standing highest on the eligibility list for appointment for that rank of service; and the department head to select for appointment one (1) of the five (5) certified to him and notify the commission thereof; and

(ii) The promotion or advancement of one of the three (3) standing highest on the eligibility list for that rank of service;

(7)(A) A period of probation not to exceed twelve (12) months before any appointment is complete and six (6) months before any promotion is complete, during which time the commission, upon reasons stated in writing by the department head, may discharge the probationer, in case of appointment, or reduce the probationer, in case of promotion.

(B) From a discharge or reduction, there shall be no appeal;

(8)(A) Temporary employees without examination, with the consent of the commissioner, in case of emergency and pending appointment from eligible lists.

(B) No temporary appointment shall continue longer than sixty (60) days, nor shall successive temporary appointments be allowed except in time of grave danger, of which the commission shall decide;

(9)(A) Promotion, based upon open competitive examinations of efficiency, character, and conduct, lists shall be created for each rank of service, and promotions shall be made therefrom as provided in this chapter; and

(B) Advancement in rank or increase in salary beyond the limits fixed for the grade by the commission which constitutes a promotion;

(10)(A) Suspension for not longer than thirty (30) days; and

(B) Leave of absence;

(11)(A) Discharge or reduction in rank or compensation after promotion or appointment is complete, only after the person to be discharged or reduced has been presented with the reasons for the discharge or reduction in writing.

(B)(i) The person so discharged or reduced shall have the right, within ten (10) days from the time of notice or discharge or reduction to reply in writing.

(ii) Should the person deny the truth of the reasons upon which the discharge or reduction is predicated and demand a trial, the commission shall grant a trial as provided in this chapter.

(iii) The reasons and the reply shall constitute a part of the trial and shall be filed with the record;

(12) An adoption and amendment of rules after public notice and hearing;

(13) The preparation of a record of all hearings and other proceedings before it, which shall be stenographically reported.

(c) The commission shall adopt such rules not inconsistent with this chapter for the necessary enforcement of this chapter.

History. Acts 1937, No. 322, § 3; 1941, No. 43, § 1; 1959, No. 464, § 1; 1983, No. 543, § 1; A.S.A. 1947, § 19-1303.

14-49-305. Departmental rules and regulations.

All employees affected by this chapter shall be governed by rules and regulations set out by the heads of their respective departments, after rules and regulations have been adopted by the governing bodies of their respective municipalities.

History. Acts 1937, No. 322, § 4; A.S.A. 1947, § 19-1304.

14-49-306. Political activity prohibited.

(a) No employee in any department affected by this chapter shall engage in the solicitation of any subscription funds or assessments, or contribute thereto, for any political party or purpose.

(b) An employee shall not be connected with any political campaign or political management, except to cast his vote and to express his personal opinion privately.

History. Acts 1937, No. 322, § 12;
A.S.A. 1947, § 19-1312.

Cross References. Political activity of
public employees permitted, § 21-1-207.

14-49-307. Employees and salaries fixed.

The city council or other governing body shall from time to time fix the number of employees and the salaries to be drawn by each in the departments affected by this chapter.

History. Acts 1937, No. 322, § 16;
A.S.A. 1947, § 19-1316.

CASE NOTES

Cited: *Satterfield v. Fewell*, 202 Ark.
67, 149 S.W.2d 949 (1941).

14-49-308. Certification for compensation.

(a) The secretary of the commission shall file with the treasurer or disbursing officer of his city a certificate of those entitled to compensation from the city under this chapter.

(b) No compensation shall be allowed to any member of the affected cities unless their names shall be so certified by the secretary.

History. Acts 1937, No. 322, § 9;
A.S.A. 1947, § 19-1309.

14-49-309. Examinations.

All examinations provided for in this chapter shall be fair and impartial, and such as to test the qualifications of the applicants for the particular service and position to be filled.

History. Acts 1937, No. 322, § 7; A.S.A.
1947, § 19-1307.

Publisher's Notes. Acts 1937, No. 322,
§ 8, provided that no employee affected by
§ 14-49-101 et seq. at the time of the
passage of this act would be subject to an
examination, except for promotion or ad-

vancement but would retain his current
position, subject to the other provisions of
§ 19-49-101 et seq. Acts 1937, No. 322,
was signed by the Governor on March 25,
1937, and became effective on June 10,
1937. (Emergency clause invalid).

CASE NOTES

Cited: Gilbert v. City of Little Rock, 544 F. Supp. 1231 (E.D. Ark. 1982).

14-49-310. Suspension of competition.

In the case of a vacancy in a position requiring peculiar or exceptional qualifications of a scientific, professional, or expert character, upon satisfactory evidence that competition is impracticable and the position can best be filled by the selection of some person designated and of recognized attainment, the board may, by a majority vote, suspend competition in this case. However, the suspension shall not be general in its application, and each case must be handled on its own merits.

History. Acts 1937, No. 322, § 6;
A.S.A. 1947, § 19-1306.

14-49-311. Suspension, discharge, or reduction in rank or compensation.

(a)(1)(A) No employee of any department of any city affected by this chapter shall be discharged or reduced in rank or compensation without being notified in writing as provided in this section.

(B) In case of suspension, discharge, or reduction, the affected or accused person shall have written notice of the action at the time it is taken.

(2) The person shall have the right of reply and trial as provided in this section and may be discharged or reduced only after conviction by trial before the commission.

(b)(1) The trial must take place within fifteen (15) days after demand for it is made.

(2) The accused must be notified at least ten (10) days prior to the trial of the date and place of trial.

(3) The accused may have compulsory process to have witnesses present at such trial.

(c)(1) The chairman shall preside at all trials and shall determine and decide all questions relative to pleadings and admissibility of evidence.

(2) The decision of the commission shall be a majority vote of members of the commission.

(d)(1)(A) A right of appeal by the city or employee is given from any decision of the commission to the circuit court within whose jurisdiction the commission is situated.

(B) The appeal shall be taken by filing with the commission, within thirty (30) days from the date of the decision, a notice of appeal. Whereupon, the commission shall send to the court all pertinent documents and papers, together with a complete transcript of all evidence and testimony adduced before the commission and all findings and orders of the commission.

(C)(i) The court shall review the commission's decision on the record and may, in addition, hear testimony or allow the introduction of any further evidence upon the request of either the city or the employee.

(ii) The testimony or evidence must be competent and otherwise admissible.

(2)(A) A right of appeal is also given from any action from the circuit court to the Supreme Court of the State of Arkansas.

(B) The appeal shall be governed by the rules of procedure provided by law for appeals from the circuit court to the Supreme Court.

(e) In the event that it is finally determined that there was a wrongful suspension, discharge, or reduction in rank of any employee, the employee shall, in such case, be entitled to summary judgment against the city for full pay for the time he lost by reason of his suspension or discharge, or for the difference in salary or loss he shall have sustained by reason of any reduction in salary.

History. Acts 1937, No. 322, §§ 5, 13; 1959, No. 464, § 2; A.S.A. 1947, §§ 19-1305, 19-1313.

CASE NOTES

ANALYSIS

Appeals.
Discharge.
Trials.

Appeals.

Inasmuch as a state statute prohibited judicial review of a police pension board's denial of a police officer's application for a pension, the state circuit court's unappealed dismissal of a mandamus suit, in which the police officer sought to compel the board to award him a pension, was not *res judicata* as to the police officer's civil rights suit in the federal courts. *Hirrill v. Merriweather*, 629 F.2d 490 (8th Cir. 1980).

Discharge.

This section does not prevent discharge in good faith without trial and without notice when a position is temporarily discontinued for economy purposes. *Satterfield v. Fewell*, 202 Ark. 67, 149 S.W.2d 949 (1941).

Trials.

Within the context of public administrative law and procedure, a claimant or litigant is not denied a constitutionally guaranteed fair hearing before an impartial tribunal simply because the agency factfinders or decisionmakers may have had some prior knowledge or even preliminary participation in the case or even though they may have formed some tentative ideas as to the merits of the controversy about to be decided. *Hirrill v. Merriweather*, 629 F.2d 490 (8th Cir. 1980).

Where an employee appeared and testified without suggesting that the board had lost jurisdiction by not trying him within 15 days after demand for trial, it was held that he waived the objections. *Watkins v. Little Rock Civil Serv. Comm'n*, 201 Ark. 626, 146 S.W.2d 159 (1941).

14-49-312. Reductions, reinstatements, or transfers in personnel.

(a)(1) If it shall become necessary to reduce the personnel of any department, reduction shall be from the lowest rank, seniority having priority.

(2) In event the personnel is subsequently increased, any employee who has been transferred to another department or discharged, by reason of the reduction, shall have seniority rights over any other employee, or any applicant for employment, to any position created on account of the increase in personnel.

(b) If the personnel of any department is reduced by reason of the transfer of any duties of one (1) department to another department, any person so discharged shall have priority in the department to which the duties are transferred over any employee performing the duties who does not have a seniority rating at least equal to the person relieved on account of the transfer of the duties, and over any applicant for employment covering the duties.

(c) When a vacancy occurs in any department, any employee of the same classification in any other department, seniority having priority, shall have the option of transferring to the vacancy in the department.

History. Acts 1937, No. 322, § 14; 1941, No. 43, § 2; A.S.A. 1947, § 19-1314.

CASE NOTES**Reinstatement.**

Police officer who stood at head of list for promotion at the time of his entrance into military service was not entitled to appointment upon his return to position vacant at his entrance into the service, even though the commission's regulations

made appointments retroactive to the inception of the vacancy, his status of police officer being suspended during his war service. *Smith v. Little Rock Civil Serv. Comm'n*, 214 Ark. 765, 218 S.W.2d 366 (1949).

14-49-313. Political discrimination prohibited.

No person in any department affected by this chapter shall be appointed, reduced, suspended, discharged, or otherwise discriminated against because of his political opinion or affiliation.

History. Acts 1937, No. 322, § 11; A.S.A. 1947, § 19-1311.

CHAPTER 50**CIVIL SERVICE FOR CITIES OF 20,000 TO 75,000****SUBCHAPTER**

1. GENERAL PROVISIONS.
2. CIVIL SERVICE COMMISSION.
3. CIVIL SERVICE SYSTEM.

RESEARCH REFERENCES

C.J.S. 62 C.J.S., Mun. Corp., §§ 469, 488.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

14-50-101. Applicability.

14-50-102. Penalty.

A.C.R.C. Notes. Acts 1989, No. 191, § 1, provided: "Every city of the first class having the mayor-council form of government and a population of no less than 37,000 inhabitants nor more than 70,000 inhabitants according to the 1980 federal decennial census may add two more members to its civil service commission. The law applicable to the commission shall

apply to the additional members except that in each such city the first two additional members appointed pursuant to this act shall serve staggered terms to be determined by lot so that one will serve a three year term and one a six year term and their successors shall serve six year terms."

14-50-101. Applicability.

(a) Any city of the first class in this state having a population of twenty thousand (20,000) or more but less than seventy-five thousand (75,000) inhabitants, according to the most recent federal census, may establish or continue a civil service system for the nonuniformed employees of these cities, either by action of the city council or other governing body of the city or by a local initiated measure.

(b) Any civil service system established or continued pursuant to this chapter shall cover such nonuniformed employees of the city as the ordinance establishing or continuing the system shall prescribe.

History. Acts 1963, No. 221, § 1; A.S.A. 1947, § 19-1419.

Publisher's Notes. Acts 1963, No. 221, § 20, provided that the purpose of the act is that it be the only one under which first-class cities with a population of at least 20,000 but less than 75,000 inhabit-

ants can establish a civil service system for nonuniformed employees, and to this end all laws and parts of laws in conflict with the act, including Acts 1939, No. 339, and all amendments thereto, and Acts 1941, No. 61, and all amendments thereto, are repealed.

14-50-102. Penalty.

Any person violating any part of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished accordingly.

History. Acts 1963, No. 221, § 19; A.S.A. 1947, § 19-1437.

Cross References. Misdemeanors, § 5-1-107.

SUBCHAPTER 2 — CIVIL SERVICE COMMISSION

SECTION.

- 14-50-201. Appointment of members.
- 14-50-202. Qualifications of members.
- 14-50-203. Organizational meeting.
- 14-50-204. Chairman of commission.
- 14-50-205. Secretary of commission.
- 14-50-206. Attorney for commission.

SECTION.

- 14-50-207. Regular meetings, etc.
- 14-50-208. Quorum for business.
- 14-50-209. Investigation powers.
- 14-50-210. Removal of commissioner.
- 14-50-211. Vacancy on commission.

14-50-201. Appointment of members.

(a) In any city establishing or continuing a civil service system pursuant to the provisions of this chapter, the city council or other governing body of the city shall, by ordinance, name five (5) citizens of the city as a civil service commission for the system.

(b) The members of the commission shall hold office as follows:

(1) One (1) shall hold office until the first Monday in April of the second year after his appointment;

(2) One (1) shall hold office until the first Monday in April on the fourth year after his appointment;

(3) One (1) shall hold office until the first Monday in April of the sixth year after his appointment;

(4) One (1) shall hold office until the first Monday in April of the eighth year after his appointment; and

(5) One (1) shall hold office until the first Monday in April of the tenth year after his appointment.

(c) If any city establishing or continuing a civil service system under this chapter already has a five-member commission for uniformed employees, the existing commission shall also be the commission for the system established or continued under this chapter.

History. Acts 1963, No. 221, § 2;
A.S.A. 1947, § 19-1420.

14-50-202. Qualifications of members.

(a) Members of the civil service commission shall be citizens of the State of Arkansas and residents of the city for at least three (3) years immediately preceding their appointment.

(b)(1) No person on the commission shall hold or be a candidate for any political office under any national, state, county, or municipal government, or be connected in any official capacity with any political party or organization.

(2) No person who is a candidate for or holds any office or position described in this subsection shall be eligible to serve as a member of the commission.

History. Acts 1963, No. 221, § 2;
A.S.A. 1947, § 19-1420.

14-50-203. Organizational meeting.

After the members of the civil service commission are named as provided in this chapter, the commission shall meet and organize.

History. Acts 1963, No. 221, § 4;
A.S.A. 1947, § 19-1422.

14-50-204. Chairman of commission.

The chairman of the civil service commission for each biennial period shall be the member whose term of office first expires.

History. Acts 1963, No. 221, § 3;
A.S.A. 1947, § 19-1421.

14-50-205. Secretary of commission.

(a) The civil service commission shall select one (1) of its members as secretary, who shall keep the books and records of the commission and shall conduct the correspondence of the commission.

(b) The secretary shall also report, or cause to be reported, the evidence in all trials or hearings before the commission, and the municipality shall pay the reasonable expense thereof.

(c) The secretary shall act as clerk when the commission is conducting a trial or hearing and shall perform such other functions and duties as the commission shall direct.

History. Acts 1963, No. 221, § 3;
A.S.A. 1947, § 19-1421.

14-50-206. Attorney for commission.

The city attorney shall act as attorney for the civil service commission in all trials or other legal transactions. However, the commission may appoint an attorney to represent the commission if it so desires.

History. Acts 1963, No. 221, § 3;
A.S.A. 1947, § 19-1421.

14-50-207. Regular meetings, etc.

The city council or other governing body shall provide:

- (1) Suitable rooms for the civil service commission to hold its meetings;
- (2) All reasonable supplies; and
- (3) The use of public buildings for holding examinations by the commission.

History. Acts 1963, No. 221, § 4;
A.S.A. 1947, § 19-1422.

14-50-208. Quorum for business.

Three (3) members of the civil service commission shall constitute a quorum for transacting the business of the commission.

History. Acts 1963, No. 221, § 3;
A.S.A. 1947, § 19-1421.

14-50-209. Investigation powers.

(a) In any investigation conducted by the commission provided for in this chapter, the commission shall have the power to subpoena, the power to require the attendance of any witness and the production of any papers or records pertinent to the investigation, and the power to administer oaths to the witnesses.

(b) To punish for contempt the nonattendance of witnesses, or the failure to produce books or papers, or the misbehavior of any person during the investigation, the commission may impose a fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500) for each offense.

History. Acts 1963, No. 221, § 12;
A.S.A. 1947, § 19-1430.

14-50-210. Removal of commissioner.

(a) The city council or other governing body of the city, by a two-thirds ($\frac{2}{3}$) vote, may remove any of the civil service commissioners during his term of office for cause.

(b) In the event of the removal of one (1) or more of the commissioners, the city council or other governing body of the city shall fill the vacancy created by the removal.

History. Acts 1963, No. 221, § 2;
A.S.A. 1947, § 19-1420.

14-50-211. Vacancy on commission.

(a) When a vacancy shall occur on the civil service commission by death, resignation, expiration of the term of office, or in any other manner, the vacancy shall be filled by the city council or other governing body of the city.

(b) In the event a vacancy occurs during the term of office of any member, his successor shall fill the unexpired term caused by the vacancy.

(c) At the normal expiration of the term, the council or other governing body of the city shall fill the vacancy by the appointment of a commissioner for a term of six (6) years.

History. Acts 1963, No. 221, § 2;
A.S.A. 1947, § 19-1420.

SUBCHAPTER 3 — CIVIL SERVICE SYSTEM

SECTION.

- 14-50-301. Existing employees.
- 14-50-302. Department heads.
- 14-50-303. Private secretaries excepted.
- 14-50-304. Rules and regulations generally.
- 14-50-305. Departmental regulations.
- 14-50-306. Political activity prohibited.
- 14-50-307. Employees and compensation fixed.
- 14-50-308. Certification for compensation.

SECTION.

- 14-50-309. Examinations.
- 14-50-310. Suspension of competition.
- 14-50-311. Discharge or reduction in rank or compensation.
- 14-50-312. Reductions, reinstatements, or transfers in personnel.
- 14-50-313. Political discrimination prohibited.

14-50-301. Existing employees.

No person who is employed by a city at the time action is taken to establish or continue a civil service system under this chapter shall be required to take an examination, except for promotion or advancement, but he shall retain his present position, subject to the other provisions of this chapter.

History. Acts 1963, No. 221, § 10;
A.S.A. 1947, § 19-1428.

14-50-302. Department heads.

(a) The provisions of this chapter shall not apply to department heads except as provided in this section.

(b) A "department head" shall be defined as an employee in a supervisory capacity who is directly responsible to the elected governing body for the direction and execution of policies and services on city work projects and duties.

(c) Department heads shall be designated in the salary ordinance, and their status shall be a matter of fact, subject to subsection (b) of this section and the appeal provisions of the ordinance.

(d) Any employee who has established a classification under the provisions of the ordinance and who has been promoted, elevated, transferred, or otherwise placed in the capacity of a department head shall, upon termination of employment as a departmental head, be permitted to return to his previous classified job, or to any position for which he may qualify, with full accumulated seniority.

(e) No provision of this section shall be construed as amending public law requirements for licenses or education.

History. Acts 1963, No. 221, § 18;
A.S.A. 1947, § 19-1436.

14-50-303. Private secretaries excepted.

Private secretaries to elected officials shall not be subject to the provisions of this chapter.

History. Acts 1963, No. 221, § 18;
A.S.A. 1947, § 19-1436.

14-50-304. Rules and regulations generally.

(a)(1) The civil service commission provided for in this chapter shall prescribe, amend, and enforce rules and regulations governing the employees of their respective cities who are under the civil service system.

(2) The rules and regulations shall have the force and effect of law.

(3) The commission shall keep a record of its examinations and shall investigate the enforcement and effect of this chapter and the rules as provided for in it.

(b) These rules shall provide for:

(1) The qualification of each applicant for appointment to any position affected by this chapter;

(2) Testing, by open competitive examinations, the relative fitness of applicants for the positions;

(3)(A) Public advertisements of all examinations by publication of notice in some newspaper having a bona fide circulation in the city and by posting of notice at the city hall at least ten (10) days before the date of the examination.

(B) Examinations shall be held on the first Monday in April and the first Monday in October of each year, and more often if necessary, under rules and regulations, as may be prescribed by the commission;

(4)(A) The creation of eligibles lists for each position of employment in the city in which shall be entered the names of the successful applicants in the order of their standing in the examination.

(B)(i) All lists for appointments or promotions as certified by the commission shall be and remain in force and effect for a period of one (1) year from the date thereof;

(ii) At the expiration of this period, all right of priority under the lists shall cease;

(5)(A) The rejection of applicants or eligibles who fail to comply with reasonable requirements of the commission in regard to age, sex, and physical condition, or who have attempted fraud or deception in connection with the examination.

(B) The commission may adopt proper rules and regulations for a suitable physical examination of all applicants;

(6)(A) Certification to the department head of the three (3) standing highest on the eligibility list for appointment for that rank of service; the department head to select for appointment one (1) of the three (3) certified to him and notify the commission thereof; and

(B) The promotion or advancement of the one (1) standing highest on the eligibility list for that rank of service;

(7)(A) A period of probation not to exceed twelve (12) months before any appointment is complete and six (6) months before any promotion is complete, during which time the commission may discharge, upon reasons stated in writing by the department head, the probationer, in case of appointment, or reduce the probationer, in case of promotion.

(B) From discharge or reduction, there shall be no appeal;

(8)(A) Temporary employees without examination with the consent of the commission in case of emergency and pending appointment from eligibles lists;

(B) No temporary appointment shall continue longer than sixty (60) days, nor shall successive temporary appointments be allowed except in time of grave danger, of which the commission shall decide;

(9)(A) Promotion based upon open competitive examinations of efficiency, character, and conduct; lists shall be created for each rank of service, and promotions shall be made therefrom as provided in this chapter; and

(B) Advancement in rank or increase in salary beyond the limits fixed for the grade by the commission which constitutes a promotion;

(10)(A) Suspension for not longer than thirty (30) days; and

(B) Leave of absence;

(11)(A) Discharge or reduction in rank or compensation after promotion or appointment is complete, only after the person to be discharged or reduced has been presented with the reasons for the discharge or reduction in writing.

(B)(i) The person so discharged or reduced shall have the right, within ten (10) days from the time of notice or discharge or reduction, to reply in writing.

(ii) Should the person deny the truth of the reasons upon which the discharge or reduction is predicated and shall demand a trial, the commission shall grant a trial as provided in this chapter. The reasons and the reply shall constitute a part of the trial and shall be filed with the record;

(12) An adoption and amendment of rules after public notice and hearing;

(13) The preparation of a record of all hearings and other proceedings before it, which shall be stenographically reported.

(c) The commission shall adopt such rules not inconsistent with this chapter for the necessary enforcement of this chapter.

History. Acts 1963, No. 221, § 5;
A.S.A. 1947, § 19-1423.

14-50-305. Departmental regulations.

All employees covered by a civil service system established or continued under the provisions of this chapter shall be governed by the regulations set out by the heads of their respective departments and approved by the city council or other governing body of the city in their respective municipalities.

History. Acts 1963, No. 221, § 6;
A.S.A. 1947, § 19-1424.

14-50-306. Political activity prohibited.

(a) No employee in any department affected by this chapter shall engage in the solicitation of any subscription funds or assessments, or contribute thereto, for any political party or purpose.

(b) An employee shall not be connected with any political campaign or political management except to cast his vote and to express his personal opinion privately.

History. Acts 1963, No. 221, § 14;
A.S.A. 1947, § 19-1432.

Cross References. Political activity of
public employees permitted, § 21-1-207.

14-50-307. Employees and compensation fixed.

The city council, or other governing body shall from time to time fix the number of employees and the salaries to be drawn by each, as well as the vacation and sick leave of employees, in the departments affected by this chapter.

History. Acts 1963, No. 221, § 17;
A.S.A. 1947, § 19-1435.

14-50-308. Certification for compensation.

(a) The secretary of the civil service commission shall file with the treasurer or disbursing officer of their city a certificate of those entitled to compensation from the city under this chapter.

(b) No compensation shall be allowed to any member of the system of the affected cities unless his name shall be so certified by the secretary.

History. Acts 1963, No. 221, § 11;
A.S.A. 1947, § 19-1429.

14-50-309. Examinations.

All examinations provided for in this chapter shall be fair and impartial and designed to test the qualifications of the applicants for the particular service and position to be filled.

History. Acts 1963, No. 221, § 9;
A.S.A. 1947, § 19-1427.

14-50-310. Suspension of competition.

In the case of a vacancy in a position requiring peculiar or exceptional qualifications of a scientific, professional, or expert character, upon satisfactory evidence that competition is impracticable and the position can best be filled by the selection of some person designated and of recognized attainment, the commission may, by majority vote, suspend

competition in this case. However, the suspension shall not be general in its application, and each case must be handled on its own merits.

History. Acts 1963, No. 221, § 8;
A.S.A. 1947, § 19-1426.

14-50-311. Discharge or reduction in rank or compensation.

(a)(1) No civil service employees under a system established or continued pursuant to this chapter shall be discharged or reduced in rank or compensation without being notified in writing of the discharge and the cause therefor.

(2) In case of discharge or reduction, the affected or accused person shall have written notice of the action at the time it is taken.

(b)(1) Within ten (10) days after the notice in writing is served upon the officer, private, or employee, he may, if he so desires, request a trial before the civil service commission on the charges alleged as grounds for discharge.

(2)(A) In the event a request for trial is made, the commission shall fix a date for the trial not more than thirty (30) days after request therefor is made.

(B) If the request for trial is not made within ten (10) days from the date of service of notice of discharge, the discharge shall become final and no trial shall be granted thereafter.

(c)(1) In the event of a trial the officer, private, or employee requesting the trial shall be notified of the date and place of the trial, at least ten (10) days prior to the date thereof.

(2) The employee shall have compulsory process to have witnesses present at the trial.

(d)(1)(A) The chairman of the commission shall preside at all trials and shall determine and decide all questions relative to pleadings and the admissibility of evidence.

(B) The decision of the commission shall be by a majority vote of the members of the commission.

(2)(A) In all trials under this section for cities having a mayor-council form of government and a population of not less than fifty-five thousand (55,000), the commission shall employ an attorney to advise and represent the commission.

(B) The attorney shall not be the city attorney, nor shall he be associated with any attorney then employed by the city.

(e)(1)(A) A right of appeal by the city or employee is given from any decision of the commission to the circuit court within whose jurisdiction the commission is situated.

(B) The appeal shall be taken by filing with the commission, within thirty (30) days from the date of the decision, a notice of appeal. Whereupon, the commission shall send to the court all pertinent documents and papers, together with a complete transcript of all evidence and testimony adduced before the commission and all findings and orders of the commission.

(C)(i) The court shall review the commission's decision on the record and, in addition, may hear testimony or allow the introduction of any further evidence upon the request of either the city or the employee.

(ii) The testimony or evidence must be competent and otherwise admissible.

(2)(A) A right of appeal is also given from any action from the circuit court to the Supreme Court of the State of Arkansas.

(B) The appeal shall be governed by the rules of procedure provided by law for appeals from the circuit court to the Supreme Court.

(f) In the event that it is finally determined that there was a wrongful discharge or reduction in rank of any employee, the employee shall be entitled to judgment against the city for whatever loss he may have sustained by reason of his discharge or demotion, taking into consideration any remuneration which the employee may have received from other sources pending the final determination of his case.

History. Acts 1963, No. 221, §§ 7, 15; 1975, No. 260, § 1; A.S.A. 1947, §§ 19-1425, 19-1433.

CASE NOTES

Discharge.

Discharge for reason that work was unsatisfactory was not sustained by a preponderance of the evidence where employee had been continued in her employment after expiration of six months' pro-

bationary period and where evidence as to the alleged poor quality of work was vague and uncertain. *City of Little Rock v. Tucker*, 234 Ark. 35, 350 S.W.2d 531 (1961) (decision under prior law).

14-50-312. Reductions, reinstatements, or transfers in personnel.

(a)(1) If it shall become necessary to reduce the personnel of any department, reduction shall be from the lowest rank, seniority having priority.

(2) In the event the personnel is subsequently increased, any employee who has been transferred to another department, or discharged, by reason of the reduction shall have seniority rights over any other employee, or any applicant for employment, to any position created on account of the increase in personnel.

(b) If the personnel of any department is reduced by reason of the transfer of any duties of one (1) department to another department, any person so discharged shall have priority in the department to which the duties are transferred over any employee performing the duties who does not have a seniority rating at least equal to the person relieved on account of the transfer of the duties and over any applicant for employment covering the duties.

(c) When a vacancy occurs in any department, any employee of the same classification in any other department, seniority having priority, shall have the option of transferring to the vacancy in the department.

History. Acts 1963, No. 221, § 16;
A.S.A. 1947, § 19-1434.

14-50-313. Political discrimination prohibited.

No person in any department affected by this chapter shall be appointed, reduced, suspended, discharged, or otherwise discriminated against because of his political opinion or affiliation.

History. Acts 1963, No. 221, § 13;
A.S.A. 1947, § 19-1431.

CHAPTER 51

CIVIL SERVICE FOR POLICE AND FIRE
DEPARTMENTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. BOARD OF CIVIL SERVICE COMMISSIONERS.
3. CIVIL SERVICE SYSTEM.

A.C.R.C. Notes. Acts 1987, No. 530, §§ 1, 2, provided that any city of the second class may establish, maintain, and operate a civil service system for its police and fire departments in the manner prescribed by law for the establishment, etc., of these systems in cities of the first class, and that the provisions of Acts 1933, No. 28, as amended, Acts 1949, No. 326, as amended, and all other laws relating to the authority of cities of the first class to establish, etc., these systems shall be equally applicable to the establishment, etc., of these systems in cities of the second class.

Acts 1989, No. 191, § 1, provided: "Ev-

ery city of the first class having the mayor-council form of government and a population of no less than 37,000 inhabitants nor more than 70,000 inhabitants according to the 1980 federal decennial census may add two more members to its civil service commission. The law applicable to the commission shall apply to the additional members except that in each such city the first two additional members appointed pursuant to this act shall serve staggered terms to be determined by lot so that one will serve a three year term and one a six year term and their successors shall serve six year terms."

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 14-51-101. Definitions.
14-51-102. Applicability.

SECTION.

- 14-51-103. Penalty.

Cross References. Departments of public safety, § 14-42-401 et seq.

Effective Dates. Acts 1933, No. 28, §§ 21, 22: Feb. 13, 1933. Emergency clause provided: "That there is dire necessity for control and management of the

police and fire departments of cities affected by this act in order to increase the efficiency of the personnel of said departments and affording much needed protection to citizens in the prosecution of crimes and fires, and this act being neces-

sary for the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in full force from and after its passage.”

14-51-101. Definitions.

As used in this chapter, unless the context otherwise requires: “board,” “commission,” or “commissioners” means the board of civil service commissioners of the police and fire departments, as provided for in § 14-51-201 et seq.

History. Acts 1933, No. 28, § 16; Pope’s Dig., § 9960; A.S.A. 1947, § 19-1616.

14-51-102. Applicability.

In addition to all other powers possessed by cities of the first class, these cities may establish a board of civil service commissioners for the police and fire departments of their cities.

History. Acts 1949, No. 326, § 1; 1971, No. 166, § 1; A.S.A. 1947, § 19-1601.1.

Publisher’s Notes. Acts 1949, No. 326, § 3a, provided that none of the provisions of this act would be applicable to civil service commissions in cities of the first class having a commission form of government; however, Acts 1959, No. 97, § 1, repealed § 3a and in §§ 2 and 3 provided

that all cities of the first class having duly established civil service commissions under the provisions of Acts 1933, No. 28, and not having fully complied with Acts 1949, No. 326, were to take immediate steps to do so and provided that the action of all civil service commissions referred to were validated and that all civil servants affected should retain all rights acquired.

14-51-103. Penalty.

Any person violating any part of this chapter shall be subject to civil suit for injunctive and declaratory relief by the aggrieved party.

History. Acts 1933, No. 28, § 20; Pope’s Dig., § 9964; A.S.A. 1947, § 19-1618; Acts 1993, No. 206, § 1.

Amendments. The 1993 amendment

substituted “shall be subject to civil suit ... party” for “upon conviction, shall be punished as for a misdemeanor.”

SUBCHAPTER 2 — BOARD OF CIVIL SERVICE COMMISSIONERS

SECTION.

- 14-51-201. Appointment of members.
- 14-51-202. Qualifications of commissioners.
- 14-51-203. Organizational meeting.
- 14-51-204. Chairman of civil service commission.
- 14-51-205. Secretary of board.
- 14-51-206. Attorney for commission and city.

SECTION.

- 14-51-207. Responsibilities of the city.
- 14-51-208. Quorum for business.
- 14-51-209. Investigation powers.
- 14-51-210. Removal of commissioner.
- 14-51-211. Vacancy on board.
- 14-51-212. No control over police or fire departments.

Effective Dates. Acts 1989, No. 432, § 4: Mar. 9, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the chairmanship of many city civil service commissions changes during the first week in May; that this act provides that the chairmen should be selected by the commission; and that this act must go into effect immediately in order to coincide with the change in chairmanships. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 439, § 5: Mar. 9, 1989. Emergency clause provided: "It is hereby

found and determined by the General Assembly that the powers and duties of Civil Service Commissions established pursuant to Act 28 of 1933, as amended, require immediate clarification in that such commissions' interference with the day to day operations and management of police and fire departments is contrary to the efficient and effective operation of such departments and is injurious to the public health, safety and welfare. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

CASE NOTES

In General.

There is nothing in this subchapter creating an enforceable expectation of continued employment; it merely gives employ-

ees certain procedural rights surrounding termination. *Dalton v. City of Russellville*, 290 Ark. 603, 720 S.W.2d 918 (1986).

14-51-201. Appointment of members.

(a) In all cities of the first class having a civil service system, the city's governing body shall, by ordinance, name five (5) upright and intelligent citizens of their cities as a board of civil service commissioners for the police and fire departments or the nonuniformed employees.

(b) The commissioners shall hold office as follows:

(1) One (1) shall hold office until the first Monday in April of the second year after his appointment;

(2) One (1) shall hold office until the first Monday in April of the fourth year after his appointment;

(3) One (1) shall hold office until the first Monday in April of the sixth year after his appointment;

(4) One (1) shall hold office until the first Monday in April of the eighth year after his appointment; and

(5) One (1) shall hold office until the first Monday in April of the tenth year after his appointment.

(c)(1) In all cities of the first class having a civil service system, the governing body may, by ordinance, add two (2) more members to its civil service commission. The law applicable to the commission shall apply to the additional members, except that in each such city, the first two (2) additional members appointed pursuant to this subsection shall serve staggered terms to be determined by lot so that one (1) will serve a three-year term and one (1) a six-year term, and their successors shall serve six-year terms.

(2) In all cities having a population of one hundred thousand (100,000) or more persons and having a civil service system, the governing body may, by ordinance, add four (4) more members to its civil service commission. The law applicable to the commission shall apply to the additional members, except that in each such city, the first four (4) additional members appointed pursuant to this subsection shall serve staggered terms to be determined by lot so that two (2) will serve a three-year term and two (2) a six-year term, and their successors shall serve six-year terms.

History. Acts 1949, No. 326, § 1; 1971, No. 166, § 1; A.S.A. 1947, § 19-1601.1; Acts 1993, No. 206, § 2; 1997, No. 1221, § 2.

Amendments. The 1993 amendment,

in (a) substituted "city's governing body" for "city council"; inserted "(1)" following "One" throughout (b); and added (c).

The 1997 amendment and added (c)(2).

CASE NOTES

ANALYSIS

De facto commissioners.
Ordinances.

De Facto Commissioners.

Where plaintiffs filed representative suit in behalf of all city police officers of Little Rock whose employment was cut off by service in the war, against members of Little Rock Civil Service Commission and asked that commissioners be permanently enjoined from acting as commissioners on theory that 1933 act authorized cities of first class to create a civil service commission for police officers and fire fighters only, and 1937 act authorized cities of more than 75,000 to create a second civil service commission for employees other than fire fighters and police officers, that hence members of the commission had violated law prohibiting members from holding more than one political office,

court properly sustained demurrer to the complaint, as even though plaintiffs were right in their theory that commissioners were serving on two commissions, the defendants would still have been de facto commissioners and equity had no authority to decide whether defendants were also de jure officers. *Smith v. Little Rock Civil Serv. Comm'n*, 214 Ark. 765, 218 S.W.2d 366 (1949) (decision under prior law).

Ordinances.

Ordinance appointing an individual to civil service commission was not legislation subject to referendum under Ark. Const. Amend. 7, inasmuch as the ordinance in questioning was merely a procedural device for administering a previous ordinance adopted pursuant to this section. *Greenlee v. Munn*, 262 Ark. 663, 559 S.W.2d 928 (1978).

14-51-202. Qualifications of commissioners.

(a) The commissioners shall be citizens of the State of Arkansas and residents of the city for more than three (3) years preceding their appointments.

(b)(1) No person on the commission shall hold, or be a candidate for, any political office under any national, state, county, or municipal government or be connected in any way in any official capacity with any political party or political organization.

(2) No person as enumerated in this subsection shall be eligible as a member of the board who at the time of his election shall hold any office.

(c) The commissioners shall be familiar with these statutes, civil rights laws, and all other state and federal public employment laws.

History. Acts 1949, No. 326, § 1; 1971, No. 166, § 1; A.S.A. 1947, § 19-1601.1; Acts 1993, No. 206, § 3.

Amendments. The 1993 amendment inserted “political” preceding “organization” in (b)(1); and added (c).

14-51-203. Organizational meeting.

(a) The commissioners named as provided in this chapter shall meet and organize.

(b) The commissioner who shall be elected for a term of two (2) years shall act as chairman.

History. Acts 1933, No. 28, § 2; Pope's Dig., § 9946; A.S.A. 1947, § 19-1602.

14-51-204. Chairman of civil service commission.

(a) The board of civil service commissioners shall, annually, on the first Monday of May select one (1) of the commissioners to serve as chairman of the commission.

(b)(1) The chairman shall preside over all meetings of the commission and be its executive officer.

(2) The chairman shall vote on questions before the board.

(c)(1) In the absence of the chairman, the board shall elect one (1) of their number to act instead of the chairman.

(2) The member so elected shall be clothed with all the powers, rights, and duties of the chairman during the absence of the chairman.

History. Acts 1933, No. 28, § 2; 1949, No. 326, § 1; Pope's Dig., § 9946; Acts 1971, No. 166, § 1; A.S.A. 1947, §§ 19-1601.1, 19-1602; Acts 1989, No. 432, § 1; 1997, No. 131, § 1.

Amendments. The 1997 amendment deleted “only in case of a tie” from the end of (b)(2).

14-51-205. Secretary of board.

(a) The board shall elect one (1) of its members as secretary.

(b) The secretary shall:

(1) Keep the books and records of the board;

(2) Conduct the correspondence of the board;

(3) Report the evidence in all trials or cause the evidence to be reported, for which the reasonable expense shall be paid by the municipality;

(4) Act as clerk when the board is conducting a trial court;

(5) Work with and act as liaison to the city employee assigned to assist the board; and

(6) Perform any other duties that may be ordered by the board.

History. Acts 1949, No. 326, § 1; 1971, No. 166, § 1; A.S.A. 1947, § 19-1601.1; Acts 1993, No. 206, § 4.

Amendments. The 1993 amendment inserted (5) and redesignated former (5) as (6).

14-51-206. Attorney for commission and city.

(a) Except if the commission decides otherwise, the city attorney shall act as attorney for the commission in all trials or other legal transactions. Provided, the commission may appoint an attorney to represent the commission if it so desires.

(b) The city shall hire, on an annual basis, independent legal counsel to represent the city and the department head when the city's managerial employment decisions are brought for review before the commission and in all trials, proceedings, or other legal transactions before the commission.

History. Acts 1949, No. 326, § 1; 1971, No. 166, § 1; A.S.A. 1947, § 19-1601.1; Acts 1993, No. 206, § 5; 1995, No. 1135, § 1.

The 1995 amendment, in (a), added the exception at the beginning of the first sentence and added the second sentence.

Amendments. The 1993 amendment added (b).

14-51-207. Responsibilities of the city.

The city council or other governing body, as the case may be, shall:

- (1) Provide suitable rooms for the board to hold meetings;
- (2) Allow all reasonable supplies;
- (3) Permit use of public buildings for holding examinations by the board;
- (4) Provide, designate, manage, and supervise a paid city employee, full-time or part-time, as may be deemed necessary by the city's chief executive officer, to be known as the administrative assistant to the commission. This assistant shall help with the clerical and administrative needs of the board; and
- (5) Provide adequate funding for legal counsel as enumerated in this chapter.

History. Acts 1933, No. 28, § 2; Pope's Dig., § 9946; A.S.A. 1947, § 19-1602; Acts 1993, No. 206, § 6.

Amendments. The 1993 amendment added (4) and (5).

14-51-208. Quorum for business.

Three (3) of the members shall constitute a quorum in any transaction.

History. Acts 1949, No. 326, § 1; 1971, No. 166, § 1; A.S.A. 1947, § 19-1601.1.

14-51-209. Investigation powers.

(a) In any investigation conducted by the commission provided for in this chapter, the commission shall have the power of subpoena, to require the attendance of any witness and the production of any papers or records pertinent to the investigation, and to administer oaths to the witnesses.

(b) To punish for contempt the nonattendance of witnesses, or the failure to produce books or papers, or misbehavior of any person during the investigation, the commission may impose a fine not to exceed five hundred dollars (\$500) for each offense.

History. Acts 1933, No. 28, § 10; Pope's Dig., § 9954; A.S.A. 1947, § 19-1610; Acts 1993, No. 206, § 7.

Amendments. The 1993 amendment substituted "five hundred dollars (\$500)" for "fifty dollars (\$50.00)" in (b).

14-51-210. Removal of commissioner.

(a) The city council or governing body of the city, by a two-thirds ($\frac{2}{3}$) vote, may remove any of the commissioners during their term of office for cause.

(b) In the event of the removal of one (1) or more of the commissioners, the council or governing body shall fill the vacancy created by the removal.

History. Acts 1949, No. 326, § 1; 1971, No. 166, § 1; A.S.A. 1947, § 19-1601.1.

CASE NOTES

ANALYSIS

Cause.
Resolution.

Cause.

City council had the right to determine what would have been a sufficient cause for removal of commissioners. *McAllister v. McAllister*, 200 Ark. 171, 138 S.W.2d 1040 (1940) (decision under prior law).

Resolution.

Since former statute did not require removal of civil service commissioners to be by ordinance, a resolution of city council was sufficient. *McAllister v. McAllister*, 200 Ark. 171, 138 S.W.2d 1040 (1940) (decision under prior law).

14-51-211. Vacancy on board.

(a) When a vacancy shall occur on the board by death, resignation, or expiration of the term of office, or in any other manner, the vacancy shall be filled by the city council or governing body of the city.

(b) In the event a vacancy occurs during the term of office of any commissioner, except as caused by the normal expiration of his term, his successor shall fill the unexpired term caused by the vacancy, and, at the normal expiration of the term, the council shall fill the vacancy by the appointment of a commissioner for a period of six (6) years.

History. Acts 1949, No. 326, § 1; 1971, No. 166, § 1; A.S.A. 1947, § 19-1601.1.

14-51-212. No control over police or fire departments.

(a) The powers and duties of every civil service commission established pursuant to this chapter shall be and are hereby expressly limited such that the said commissions shall not have any control nor shall said commissions attempt to exercise any control over the normal and routine day-to-day operations of a police or fire department, directly or indirectly.

(b) No provision of this chapter shall be construed to provide authorization to said commissions to have such authority.

History. Acts 1989, No. 439, § 1.

CASE NOTES

Policy Against Smoking.

City civil service commission's rule requiring a grievance hearing for a violation of the city's policy against smoking by police officers while on duty did not constitute interference, within the meaning of this section, in the daily operations of

the police department, and the trial court did not err in ordering the commission to follow its own rule. *Williams v. Taylor*, 311 Ark. 94, 841 S.W.2d 618 (1992).

Cited: *Donaldson v. Taylor*, 327 Ark. 93, 936 S.W.2d 551 (1997).

SUBCHAPTER 3 — CIVIL SERVICE SYSTEM

SECTION.

- 14-51-301. Rules and regulations generally.
- 14-51-302. Departmental rules and regulations.
- 14-51-303. Political activities.
- 14-51-304. Employees and salaries fixed.
- 14-51-305. Certification for compensation.
- 14-51-306. Examinations.

SECTION.

- 14-51-307. Suspension of competition.
- 14-51-308. Suspension, discharge, or reduction in rank or compensation.
- 14-51-309. Reduction in personnel.
- 14-51-310. Transfers prohibited.
- 14-51-311. Political discrimination prohibited.

Effective Dates. Acts 1949, No. 326, § 4: approved Mar. 21, 1949. Emergency clause provided: "Whereas, this Act is necessary to give proper protection to Civil Service employees in cities of the first class, to provide a more equitable means of administering Civil Service laws in said cities, and to properly protect the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage."

Acts 1973, No. 101, § 3: Feb. 12, 1973. Emergency clause provided: "It is hereby found and determined by the General As-

sembly of the State of Arkansas that the existing laws of this State relative to the holding of civil service examinations for municipal policemen and firemen, when read with the other laws of the State relative to civil service for policemen and firemen are vague and unclear regarding the time and frequency of holding such examinations and with respect to the priority of the names on lists compiled as a result of such examinations; that this confusion and uncertainty should be removed as soon as possible in order to clarify the law with respect to holding such examinations and to clarify the rights of persons

taking such examination in order to provide proper police and fire protection in the various municipalities in this State; and this Act is designed to accomplish this worthy purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 262, § 3: Mar. 17, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that some of the civil service commissions affected by this Act will test police and firefighter candidates in April; that this Act should be in effect prior to the testing; that unless this emergency clause is enacted this Act will not go into effect prior to April. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 657, § 4: Apr. 6, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 952 of 1977, as amended, is unnecessary and that the civil service

commissions created under that law are unnecessary; that the Act should be immediately repealed and the commissions immediately abolished, in order to provide for the efficient operation of the offices subject to the same. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 439, § 5: Mar. 9, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the powers and duties of Civil Service Commissions established pursuant to Act 28 of 1933, as amended, require immediate clarification in that such commissions' interference with the day to day operations and management of police and fire departments is contrary to the efficient and effective operation of such departments and is injurious to the public health, safety and welfare. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-51-301. Rules and regulations generally.

(a)(1) The board provided for in this chapter shall prescribe, amend, and enforce rules and regulations governing the fire and police departments of their respective cities.

(2) The rules and regulations shall have the same force and effect of law.

(3) The board shall keep a record of its examinations and shall investigate the enforcement and effect of this chapter and the rules as provided for in this section.

(b) These rules shall provide for:

(1)(A) The qualifications of each applicant for appointment to any position on the police or fire department;

(B)(i) No person shall be eligible for appointment to any position on the fire department who has not arrived at the age of twenty-one (21) years or who has arrived at the age of thirty-two (32) years;

(ii) No person shall be eligible for appointment on the police department affected by this chapter who has not arrived at the age of twenty-one (21) years;

(2) Open competitive examination to test the relative fitness of applicants for the positions;

(3)(A) Public advertisement of all examinations by publication of notice in some newspaper having a bona fide circulation in the city and by posting of notice at the city hall at least ten (10) days before the date of the examinations.

(B) The examinations may be held on the first Monday in April or the first Monday in October, or both, and more often, if necessary, under such rules and regulations as may be prescribed by the board;

(4)(A)(i) The creation and maintenance of current eligibles lists for each rank of employment in the departments, in which shall be entered the names of the successful candidates in the order of their standing in the examination. However, for ranks in each department where there may not be openings during an annual period, the board may establish rules to create the eligibles list on an as needed basis.

(ii) No person shall be eligible for examination for advancement from lower ranks to higher ranks until that person shall have served at least one (1) year in the lower rank, except in case of emergency, which emergency shall be decided by the board. The board shall determine the rank or ranks eligible to be examined for advancement to the higher rank.

(B)(i) All lists for appointments or promotions as certified by the board shall be and remain in force and effect for the period of one (1) year from the date thereof.

(ii) At the expiration of this period, all right of priority under the lists shall cease;

(5)(A) The rejection of candidates as eligibles who fail to comply with reasonable requirements of the board in regard to age, sex, physical condition, or who have been guilty of a felony, or who have attempted fraud or deception in connection with the examination.

(B)(i) All applicants for appointment and all applicants for reinstatement shall undergo a suitable physical examination.

(ii)(a) The examination shall be conducted in the manner and form as provided by law.

(b) If no provision has been made by existing law for such examination, then the board may adopt proper rules and regulations to carry this subdivision into effect;

(6) Certification to the department head of the three (3) standing highest on the eligibility list for appointment for that rank of service, and for the department head to select for appointment or promotion one (1) of the three (3) certified to him and notify the commission thereof;

(7)(A) A period of probation not to exceed twelve (12) months before any appointment is complete and six (6) months before any promotion is complete.

(B) During the period, the probationer may be discharged, in case of an appointment, or reduced, in case of promotion, by the chief of the police or of the fire department;

(8)(A) Temporary employees without examination with the consent of the commission, in cases of emergency, and pending appointment from the eligibles list.

(B) No temporary appointment shall continue longer than sixty (60) days, nor shall successive temporary appointments be allowed except in times of grave danger, of which the commission shall decide;

(9)(A)(i) Establishing eligibility lists for promotion based upon open competitive examinations.

(ii) The exams may include a rating of applicants based on results of written, oral, or practical examinations, length of service, efficiency ratings, and educational or vocational qualifications.

(iii) Lists shall be created for each rank of service and promotions made from the lists as provided in this section.

(B) Advancement in rank or increase in salary beyond the limits fixed for the grade by the rules of the commission shall constitute a promotion;

(10)(A) Suspension for not longer than thirty (30) calendar days; and

(B) Leave of absence;

(11)(A) Discharge or reduction in rank or compensation after promotion or appointment is complete, only after the person to be discharged or reduced has been presented with the reasons for the discharge or reduction in writing.

(B)(i) The person so discharged or reduced shall have the right, within ten (10) days from the date of notice of discharge or reduction, to reply in writing.

(ii) Should the person deny the truth of the reasons upon which the discharge or reduction is predicated and demand a trial, the commission shall grant a trial as provided in this chapter.

(iii) The reasons and the reply shall constitute a part of the trial and be filed with the record;

(12) The adoption and amendment of rules after public notice and hearing; and

(13) The preparation of a record of all hearings and other proceedings before it, which shall be stenographically reported.

(14) A review of complaints filed by any citizen pursuant to rules promulgated by the commission, including rules that give the commission the authority to consider certain personnel issues in executive session, and to establish any necessary appellate procedures.

(c) The commission shall adopt such rules not inconsistent with this chapter for necessary enforcement of this chapter, but shall not adopt any rule or rules which would authorize any interference with the day-to-day management or operation of a police or fire department.

History. Acts 1933, No. 28, § 3; Pope's Dig., § 9947; Acts 1959, No. 205, § 1; 1973, No. 101, § 1; 1977, No. 450, § 1; A.S.A. 1947, § 19-1603; Acts 1987, No. 262, § 1; 1987, No. 276, § 1; 1987, No. 657, § 3; 1989, No. 439, § 2; 1993, No. 206, § 8; 1995, No. 473, § 1; 1997, No. 542, § 1; 1997, No. 1221, § 1.

Publisher's Notes. Formerly, the last proviso in subsection (b)(1) of this section

provided that the age limits were not applicable to any persons employed in a police or fire department at the time of the passage of this act. Acts 1933, No. 28, was signed by the Governor and became effective on February 13, 1933.

Amendments. The 1993 amendment deleted (b)(1)(B)(i)(b); in (b)(1)(B)(i), substituted "has arrived at the age of thirty-two (32) years" for "is over thirty-one (31)

years of age"; in (b)(4)(A)(i), substituted "creation and maintenance of current" for "creation of" and added the second sentence; in (b)(4)(A)(ii), substituted "lower ranks to higher ranks until that person" for "a lower to a higher rank until he" and added the second sentence; and added "and" to the end of (b)(12).

The 1995 amendment deleted "or who has arrived at the age of thirty-two (32) years" from the end in (b)(1)(B)(i); deleted

"or who is over the age of forty-five (45) years" from the end in (b)(1)(B)(ii); substituted "appointments" for "appointment" in (b)(8)(B); and inserted the designations (b)(9)(A)(i) and (b)(9)(A)(ii).

The 1997 amendment by No. 542 added "or who has arrived at the age of thirty-two (32) years" to the end of (b)(1)(B)(i).

The 1997 amendment by No. 1221 added (b)(14).

RESEARCH REFERENCES

Ark. L. Rev. Administrative Law in Arkansas, 4 Ark. L. Rev. 107.

UALR L.J. Survey—Civil Rights, 11 UALR L.J. 149.

Survey—Miscellaneous, 11 UALR L.J. 235.

CASE NOTES

ANALYSIS

Constitutionality.

In general.

Appointments and promotions.

Discharges or reductions.

Evidence.

Examinations.

—In general.

—Advancements in rank.

—Eligibility lists.

Force and effect.

Suspensions.

—In general.

—Entitlement to trial.

—Leaves of absence.

Temporary appointments.

Constitutionality.

Where plaintiff was passed over for promotion to assistant police chief and alleged denial of due process and equal protection under the 14th amendment based on violations of this section, supreme court held that alleged violations of civil service statutes did not constitute a clearly established right under the federal constitution. *Viriden v. Roper*, 302 Ark. 125, 788 S.W.2d 470 (1990).

In General.

Subdivision (a)(1) gives a civil service commission the authority to enforce fire department regulations adopted by city council. *Frego v. Jonesboro Civil Serv. Comm'n*, 285 Ark. 35, 684 S.W.2d 258 (1985).

Appointments and Promotions.

Increase in pay within pay range of a rank is not a promotion or advancement in rank under subdivision (b)(9) requiring an examination. *Haynie v. City of Little Rock*, 243 Ark. 86, 418 S.W.2d 633 (1967).

The requirement of subdivision (b)(4)(A)(ii) that a person serve at least one year in a lower rank before becoming eligible for promotion expressly applies to advancement and there is nothing in this section suggesting that vacancies must be filled only by an advancement of personnel through the ranks; the provisions clearly contemplate otherwise by making a distinction between persons who are promoted and those who are appointed. *Amason v. City of El Dorado*, 281 Ark. 50, 661 S.W.2d 364 (1983).

The Arkansas civil service statutes for police officers and fire fighters do not require that a vacancy in the office of chief of police must be filled by promotion from within the ranks of the police department. *Amason v. City of El Dorado*, 281 Ark. 50, 661 S.W.2d 364 (1983).

The statutory language in subdivision (b)(6) which speaks of certification of the three highest persons refers to the appointment of applicants, not the promotion of employees. *Bradley v. Bruce*, 288 Ark. 342, 705 S.W.2d 431 (1986).

This section specifically provides that promotion shall be made on the basis of the examination; there is no provision authorizing any other criterion, including

seniority. *Bradley v. Bruce*, 288 Ark. 342, 705 S.W.2d 431 (1986).

This section does not provide for seniority to be used as a factor in promotion; thus seniority cannot be used as a factor. *Worth v. Civil Serv. Comm'n*, 294 Ark. 643, 746 S.W.2d 364 (1988).

City lost the protection of the saving clause of § 14-48-102 when, at the time of the government reorganization in 1967, it promoted firemen in accordance with the law governing cities of the first class having a city administrator form of government contained in § 14-48-101 et seq., including this section which requires promotion solely on the basis of examination. *City of Ft. Smith v. Driggers*, 305 Ark. 409, 808 S.W.2d 748 (1991).

Discharges or Reductions.

Action of demoted police officer making scurrilous and defamatory allegations against mayor and civil service commission was held insubordination in violation of the rules and regulations of the commission, justifying his dismissal. *Ward v. City of Ft. Smith*, 201 Ark. 1117, 148 S.W.2d 164 (1941).

Where city had regulation that a department head could not be discharged without notification in writing from governing body of city, the city administrator alone did not have authority to discharge the chief of the municipal fire department. *Sanders v. City of Ft. Smith*, 251 Ark. 494, 473 S.W.2d 182 (1971).

Where private citizen files charges against a police officer, civil service commission, after conducting a trial to investigate, has the authority to dismiss the officer. *Civil Serv. Comm'n v. Bass*, 252 Ark. 178, 477 S.W.2d 842 (1972).

Judgment affirming findings of civil service commission was reversed where neither the notice of discharge nor the findings of the commission upholding a dismissal contained a statement of the rules and regulations that were allegedly violated. *Magness v. Shock*, 262 Ark. 148, 554 S.W.2d 342 (1977).

A civil service commission is authorized to modify, by increasing or decreasing, the punishment imposed by a police chief. *Tovey v. City of Jacksonville*, 305 Ark. 401, 808 S.W.2d 740 (1991).

The modification of an officer's punishment, after a statutory hearing, cannot be construed as interference with the day-to-

day management or operation of a police department, instead, it is the statutorily authorized enforcement of a regulation. *Tovey v. City of Jacksonville*, 305 Ark. 401, 808 S.W.2d 740 (1991).

Evidence.

Evidence was held to support civil service commission's findings in proceeding to dismiss chief of detectives charged with being drunk while on duty. *Civil Serv. Comm'n v. McDougal*, 198 Ark. 388, 129 S.W.2d 589 (1939), overruled in part on other grounds by *Tovey v. Jacksonville*, 305 Ark. 401, 808 S.W.2d 740 (1991).

Finding of circuit court that charges were not sustained and restoring official to his position as chief of police was held not against preponderance of the testimony. *Civil Serv. Comm'n v. Matlock*, 205 Ark. 286, 168 S.W.2d 424 (1943).

Evidence supported civil service commission's finding of dismissal where police officer frequently left his work early while on the night shift, and on occasion, came to work after he had been drinking. *Tittle v. City of Conway*, 268 Ark. 1126, 599 S.W.2d 412 (Ct. App. 1980).

Examinations.

—In General.

That one occupying position of motor patrolman without examination was, as a result of an examination for that position, demoted to his original position as patrolman and another was appointed motor patrolman, was held not to show discrimination. *Ward v. City of Ft. Smith*, 201 Ark. 1117, 148 S.W.2d 164 (1941).

Use of oral examinations in the selection process is not prohibited, but it must be capable of objective grading and review. *Bennett v. Blytheville Civil Serv. Comm'n*, 293 Ark. 136, 733 S.W.2d 414 (1987).

—Advancements in Rank.

Advancement in rank denotes an advance from a lower rank to a higher rank and not an increase in pay within the pay range of the rank. *Haynie v. City of Little Rock*, 243 Ark. 86, 418 S.W.2d 633 (1967).

Word "grade" does not mean a pay step within the pay range for a particular job class title, but is synonymous with "rank." *Haynie v. City of Little Rock*, 243 Ark. 86, 418 S.W.2d 633 (1967).

Where city board of directors is empowered to fix salaries, reasonable variations

therein for persons holding the same rank will be upheld. *Haynie v. City of Little Rock*, 243 Ark. 86, 418 S.W.2d 633 (1967).

—Eligibility Lists.

This section plainly rebuts the notion that promotion is automatic, for the appointing authority makes the selection from among the three persons standing highest on the eligibility list; moreover, the eligibility list remains in force for one year, which also indicates that promotions need not be made at once. *Orrell v. City of Hot Springs*, 265 Ark. 267, 578 S.W.2d 18 (1979).

Under subdivision (b)(4), police and fire departments may maintain more than one eligibility list simultaneously, and each list expires one year after it is certified. *Cross v. Bruce*, 284 Ark. 230, 681 S.W.2d 339 (1984).

Individuals who underwent examination process and established their eligibility for promotion may not have their rights prejudiced by litigation in which they were not joined. *Worth v. Civil Serv. Comm'n*, 297 Ark. 251, 761 S.W.2d 169 (1988).

Each time a position became available within the police department, the Commission was required to submit the names to the police chief of the three applicants with the highest examination scores at that time. *Burcham v. City of Van Buren*, 330 Ark. 451, — S.W.2d — (1997).

Force and Effect.

Provision in subsection (a) that rules and regulations promulgated by civil service commission shall have the force of law is not an improper delegation of power; authority to make rules and regulations must be read in connection with express purpose of the statute, and force of law cannot be given to any rule and regulation unless it comes within the purview of the legislation. *Civil Serv. Comm'n v. McDougal*, 198 Ark. 388, 129 S.W.2d 589 (1939), overruled in part on other grounds by *Tovey v. Jacksonville*, 305 Ark. 401, 808 S.W.2d 740 (1991).

Civil service commission may delegate details of administration if purely ministerial but, being charged by law with power to make rules, cannot delegate that power, though authority as to execution may be delegated. *Civil Serv. Comm'n v. McDougal*, 198 Ark. 388, 129 S.W.2d 589

(1939), overruled in part on other grounds by *Tovey v. Jacksonville*, 305 Ark. 401, 808 S.W.2d 740 (1991).

Civil service commission does not surrender control of the police department by adoption of rules designating chief of police executive head of the department with power to establish rules and regulations for the department. *Civil Serv. Comm'n v. McDougal*, 198 Ark. 388, 129 S.W.2d 589 (1939), overruled in part on other grounds by *Tovey v. Jacksonville*, 305 Ark. 401, 808 S.W.2d 740 (1991).

Delegation by civil service commission to a panel to hold oral examinations of applicants to an eligibility promotion list would constitute an unlawful delegation of the commission's authority where no rule or regulation of the commission established the measurable standards capable of review by which the panelists should examine the applicants. *Booth v. Baer*, 263 Ark. 213, 563 S.W.2d 709 (1978).

Suspensions.

—In General.

Where legislature in plain language limited the suspension of police officers or fire fighters to a period of 30 days, police officer could not be suspended longer than 30 days without pay pending investigation into criminal offenses despite police officer's alleged failure to assist and cooperate with the investigation. *City of N. Little Rock v. Montgomery*, 261 Ark. 16, 546 S.W.2d 154 (1977).

The import of the decision in *City of North Little Rock v. Montgomery*, 261 Ark. 16, 546 S.W.2d 154 (1977), overruled the holding in *Russ v. Civil Serv. Comm'n*, 222 Ark. 666, 262 S.W.2d 137 (1953), insofar as that case held that the word "suspend" in a regulation could be interpreted to include permanent discharge from employment; accordingly, a police chief, acting under a regulation empowering him to suspend officers, did not have authority to discharge officer, but could only suspend him for 30 days. *Tittle v. City of Conway*, 268 Ark. 1126, 599 S.W.2d 412 (Ct. App. 1980).

A suspension without pay is not equivalent to a reduction in compensation for the purposes of determining whether a suspended civil service employee is entitled to a trial. *Honeycutt v. City of Fort Smith*, 327 Ark. 530, 939 S.W.2d 306 (1997).

—Entitlement to Trial.

While this chapter provides that a firefighter or police officer is entitled to a trial when discharged or reduced in rank or compensation, this chapter does not require a trial for a ten-day disciplinary suspension. *Honeycutt v. City of Fort Smith*, 327 Ark. 530, 939 S.W.2d 306 (1997).

—Leaves of Absence.

Section 21-4-301 et seq. providing for authorization of leaves of absence to all public employees entering military service amended previous civil service act and was retroactive, so that ordinance providing for retention of civil service status of all municipal employees while in the armed forces was valid. *Smith v. Little Rock Civil Serv. Comm'n*, 214 Ark. 765, 218 S.W.2d 366 (1949).

Police officer who stood at head of list for promotion at the time of his entrance into military service, was not entitled to appointment upon his return to position vacant at his entrance into the military even though civil service commission's regulations made appointments retroactive to the inception of the vacancy, his status of police officer being suspended during his war service. *Smith v. Little Rock Civil Serv. Comm'n*, 214 Ark. 765, 218 S.W.2d 366 (1949).

Police officer who was at head of list when he entered military service was entitled to be restored to position on list on return from service, as court had to consider federal, state, and municipal legislation in passing on rights of public employee as returning serviceman. *Smith v. Little Rock Civil Serv. Comm'n*, 214 Ark. 765, 218 S.W.2d 366 (1949).

Police officer at head of the list for appointment as sergeant in which there

was a vacancy when he entered military service was not entitled to be applicant for grade of lieutenant upon his return when he was a patrolman when he entered the military, as subdivision (b)(4)(A)(ii) requires applicant for position of higher rank to serve for one year in lower rank before applying for higher rank position. *Smith v. Little Rock Civil Serv. Comm'n*, 214 Ark. 765, 218 S.W.2d 366 (1949).

Temporary Appointments.

In case of an emergency, civil service commission, may fill a vacancy without competitive examination but such an appointment is not intended to extend beyond the emergency. *Connor v. Ricks*, 213 Ark. 768, 212 S.W.2d 552 (1948).

Where ordinance provided that all appointments to municipal grades were to be considered temporary until six months after termination of emergency by the President of the United States, all appointments would still be temporary until such declaration by the President although hostilities had ceased, and court could not require new examinations for permanent positions until the city council set up machinery for procedure. *Smith v. Little Rock Civil Serv. Comm'n*, 214 Ark. 765, 218 S.W.2d 366 (1949).

Cited: *Wammack v. City of Batesville*, 522 F. Supp. 1006 (E.D. Ark. 1981); *Gilbert v. City of Little Rock*, 544 F. Supp. 1231 (E.D. Ark. 1982); *Roper v. City of Pine Bluff*, 673 F. Supp. 329 (E.D. Ark. 1987); *Pulaski County Civil Serv. Comm'n v. Davis*, 292 Ark. 340, 730 S.W.2d 220 (1987); *Bennett v. Blytheville Civil Serv. Comm'n*, 293 Ark. 136, 733 S.W.2d 414 (1987); *City of Ft. Smith v. Driggers*, 294 Ark. 311, 742 S.W.2d 921 (1988); *Williams v. Taylor*, 311 Ark. 94, 841 S.W.2d 618 (1992).

14-51-302. Departmental rules and regulations.

All employees in any fire or police department affected by this chapter shall be governed by rules and regulations set out by the chief of their respective police or fire departments after rules and regulations have been adopted by the governing bodies of their respective municipalities.

History. Acts 1933, No. 28, § 4; Pope's Dig., § 9948; A.S.A. 1947, § 19-1604.

CASE NOTES

ANALYSIS

Adoption.

Commission's authority.

Off duty employment.

Adoption.

The adoption of fire department regulation by a city council motion was an acceptable means since this section is open ended as to the method of adoption. *Frego v. Jonesboro Civil Serv. Comm'n*, 285 Ark. 35, 684 S.W.2d 258 (1985).

Commission's Authority.

Civil service commission, and not the chief of police, is the agency responsible for enforcing its rules. *Civil Serv. Comm'n v. McDougal*, 198 Ark. 388, 129 S.W.2d 589 (1939), overruled in part on other grounds by *Tovey v. Jacksonville*, 305 Ark. 401, 808 S.W.2d 740 (1991).

Civil service commission does not surrender control of police department by adoption of rules designating chief of police executive head of the department with power to establish rules and regulations

for the department and to discipline those under his authority for violation of such rules and regulations, and exercise of disciplinary measures by the chief does not deprive the commission of the power to prefer charges against officer for violation of rules. *Civil Serv. Comm'n v. McDougal*, 198 Ark. 388, 129 S.W.2d 589 (1939), overruled in part on other grounds by *Tovey v. Jacksonville*, 305 Ark. 401, 808 S.W.2d 740 (1991).

Civil service commission has authority to dismiss police officer. *Civil Serv. Comm'n v. Bass*, 252 Ark. 178, 477 S.W.2d 842 (1972).

Off Duty Employment.

Patrolman was properly discharged for failure to obtain written permission to engage in off duty employment as required by the police department's rule. *Dalton v. City of Russellville*, 290 Ark. 603, 720 S.W.2d 918 (1986).

Cited: *City of N. Little Rock v. Montgomery*, 261 Ark. 16, 546 S.W.2d 154 (1977).

14-51-303. Political activities.

In addition to all powers and duties provided by law, the civil service commissions for police and fire departments of cities of the first and second class shall promulgate rules and regulations governing the political activities of fire department and police department personnel.

History. Acts 1987, No. 67, § 1.

A.C.R.C. Notes. The language "and second class" was inadvertently added to and adopted as part of, the 1989 corrective bill, Acts 1989, No. 990.

Publisher's Notes. Former § 14-51-

303, concerning prohibition of political activity, was repealed by Acts 1987, No. 67, § 2. The former section was derived from Acts 1933, No. 28, § 12; Pope's Dig., § 9956; A.S.A. 1947, § 19-1612.

14-51-304. Employees and salaries fixed.

The city council or board shall from time to time fix the number of employees and the salaries to be drawn by each rank in the fire and police departments of their respective cities.

History. Acts 1933, No. 28, § 17; Pope's Dig., § 9961; A.S.A. 1947, § 19-1617.

CASE NOTES

ANALYSIS

In general.
Employees.
Salaries.

In General.

Civil service commission did not abdicate any authority when it stated that fixing the number of employees and the salaries to be drawn by each rank in the fire department was the duty of board of directors of the city. *Haynie v. City of Little Rock*, 243 Ark. 86, 418 S.W.2d 633 (1967).

Employees.

A city ordinance authorizing a day chief and a night chief of police was void; as authority to create the office of chief of police did not authorize the appointment of two chiefs. *Stout v. Stinnett*, 210 Ark. 684, 197 S.W.2d 564 (1946).

Salaries.

In city under city manager form of government, the board of directors has the power to fix the salaries within each rank of the fire department. *Haynie v. City of Little Rock*, 243 Ark. 86, 418 S.W.2d 633 (1967).

The fixing of wages, hours, and the like for city employees is a legislative responsibility that cannot be delegated or bargained away; thus, a proposed "binding-arbitration" ordinance, which was to be a permanent measure, providing a procedure by which any future wage controversy with the city police not resolved by agreement was to be referred to an arbitration panel, whose decision would be final, binding all parties, and not reviewable by any court, would violate this section and Ark. Const., Art. 12, § 4. *Czech v. Baer*, 283 Ark. 457, 677 S.W.2d 833 (1984).

14-51-305. Certification for compensation.

(a) The secretary of the commission shall file with the treasurer or disbursing officer of his city a certificate of those entitled to compensation from the city under this chapter.

(b) No compensation shall be allowed to any member of the police or fire departments of the affected cities unless their names shall be so certified by the secretary.

History. Acts 1933, No. 28, § 9; Pope's Dig., § 9953; A.S.A. 1947, § 19-1609.

14-51-306. Examinations.

All examinations provided for in this chapter shall be fair and impartial and such as to test the qualification of the applicants for the particular service and position to be filled.

History. Acts 1933, No. 28, § 7; Pope's Dig., § 9951; A.S.A. 1947, § 19-1607.

Publisher's Notes. Acts 1933, No. 28, § 8, provided that no employee affected by § 14-51-101 et seq. and in the employ of any police or fire department at the time of the passage of this act would be subject

to an examination, except for promotion or advancement, but would retain his current standing, subject to the other provisions of § 14-51-101 et seq. Acts 1933, No. 28, was signed by the Governor and became effective on February 13, 1933.

CASE NOTES**Qualifications.**

The use of a sergeant's eligibility promotion list was properly enjoined where there was no showing as to the qualifications designated by the civil service commission for a police sergeant and where

there was no showing that the personality traits, upon which the applicants were examined, had been determined by the commission to be necessary and important to the position to be filled. *Booth v. Baer*, 263 Ark. 213, 563 S.W.2d 709 (1978).

14-51-307. Suspension of competition.

In the case of a vacancy in a position requiring peculiar or exceptional qualifications of a scientific, professional, or expert character, upon satisfactory evidence that competition is impracticable and that the position can best be filled by the selection of some person designated who is of recognized attainment, the board may, by a majority vote, suspend competition in this case. However, the suspension shall not be general in its application, and each case must be handled on its own merits.

History. Acts 1933, No. 28, § 6; Pope's Dig., § 9950; A.S.A. 1947, § 19-1606.

CASE NOTES**In General.**

Civil service commission may fill a vacancy which requires "peculiar or exceptional qualifications of scientific, professional, or expert character," with a person

who does not meet the qualifications, rules, and regulations required of others, and such appointee will be deemed the best one available. *Connor v. Ricks*, 213 Ark. 768, 212 S.W.2d 552 (1948).

14-51-308. Suspension, discharge, or reduction in rank or compensation.

(a)(1) No civil service employees shall be discharged or reduced in rank or compensation without being notified in writing of the discharge and its cause.

(2) In case of suspension, discharge, or reduction, the affected or accused person shall have written notice of the action at the time action is taken.

(b)(1) Within ten (10) days after the notice in writing is served upon the officer, private, or employee, he may, if he so desires, request a trial before the commission on the charges alleged as the ground for discharge.

(2)(A) In the event a request for trial is made, the commission shall fix a date for the trial not more than fifteen (15) days after request therefor is made.

(B) If the request for trial is not made within ten (10) days from the date of service of notice of discharge, the discharge shall become final and no trial shall be granted thereafter.

(i) The appeal shall be taken by filing with the commission, within thirty (30) days from the date of the decision, a notice of appeal. The responsibility of filing an appeal and paying for the transcript of the

proceedings before the municipal civil service commission shall be borne by the party desiring to appeal the commission's decision.

(ii) The commission will upon receiving notice of an appeal prepare a written order containing its decision and ensure that the transcript and evidence be made available for filing in the circuit court once the appealing party has paid the cost of preparing the transcript.

(iii) However, if the court determines that the party appealing the commission's decision took the appeal in good faith and with reasonable cause to believe he or she would prevail, the commission shall reimburse the appealing party for the cost of the transcript.

(c)(1) In the event of a trial, the officer, private, or employee requesting the trial shall be notified of the date and place of the trial at least ten (10) days prior to the date thereof.

(2) The officer, private, or employee shall have compulsory process to have witnesses present at the trial.

(d)(1) The chairman of the commission shall preside at all trials and shall determine and decide all questions relative to pleadings and the admissibility of evidence.

(2) The decision of the commission shall be by a majority vote of the members of the commission.

(e)(1)(A) A right of appeal by the city or employee is given from any decision of the commission to the circuit court within whose jurisdiction the commission is situated.

(B)(i) The appeal shall be taken by filing with the commission, within thirty (30) days from the date of the decision, a notice of appeal. The responsibility of filing an appeal and paying for the transcript of the proceedings before the municipal civil service commission shall be borne by the party desiring to appeal the commission's decision.

(ii) The commission will upon receiving notice of an appeal prepare a written order containing its decision and ensure that the transcript and evidence be made available for filing in the circuit court once the appealing party has paid the cost of preparing the transcript.

(iii) However, if the court determines that the party appealing the commission's decision took the appeal in good faith and with reasonable cause to believe he or she would prevail, the commission shall reimburse the appealing party for the cost of the transcript.

(C)(i) The court shall review the commission's decision on the record and may, in addition, hear testimony or allow the introduction of any further evidence upon the request of either the city or the employee.

(ii) The testimony or evidence must be competent and otherwise admissible.

(2)(A) A right of appeal is also given from any action from the circuit court to the Supreme Court of the State of Arkansas.

(B) The appeal shall be governed by the rules of procedure provided by law for appeals from the circuit court to the Supreme Court.

(f) In the event that it is finally determined that there was a wrongful suspension, discharge, or reduction in rank of any employee,

the employee shall be entitled to judgment against the city for whatever loss he may have sustained by reason of his suspension, discharge, or demotion, taking into consideration any remuneration which the officer, private, or employee may have received from other sources pending the final determination of his case.

History. Acts 1933, No. 28, § 13; §§ 19-1605.1, 19-1613; Acts 1991, No. Pope's Dig., § 9957; Acts 1949, No. 326, 244, § 1.
§ 2; 1959, No. 205, § 2; A.S.A. 1947,

CASE NOTES

ANALYSIS

Constitutionality.

In general.

Appeals.

—In general.

—Circuit court.

—Supreme court.

Discharges.

—In general.

—Evidence.

—Trials.

—Notice.

Reductions in rank.

Suspensions.

Wrongful suspension, etc.

Constitutionality.

Former similar statute authorizing appeal and hearing in circuit court from finding of civil service commission was held not unconstitutional as conferring administrative powers and duties upon the court. *Civil Serv. Comm'n v. Matlock*, 205 Ark. 286, 168 S.W.2d 424 (1943), aff'd, 206 Ark. 1145, 178 S.W.2d 662 (1944) (decision under prior law).

Procedure under this section affords parties ample due process. *Eldridge v. Sullivan*, 980 F.2d 499 (8th Cir. 1992).

In General.

Civil service commission could not try anyone for violation of a rule unless they had prescribed such written rule, but no rule would be required to charge a person with the commission of a crime or a violation of civil service statutes. *Civil Serv. Comm'n v. Cruse*, 192 Ark. 86, 89 S.W.2d 922 (1936) (decision under prior law).

Civil service commission, and not the chief of police, was the agency held responsible for enforcing its rules. *Civil Serv. Comm'n v. McDougal*, 198 Ark. 388, 129 S.W.2d 589 (1939), overruled in part

on other grounds by *Tovey v. Jacksonville*, 305 Ark. 401, 808 S.W.2d 740 (1991) (decision under prior law).

Civil service commission did not surrender control of the police department by adoption of rules designating chief of police executive head of the department with power to establish rules and regulations for the department and to discipline those under his authority for violation of such rules and regulations, and exercise of disciplinary measures by the chief did not deprive the commission of the power to prefer charges against officer for violation of rules. *Civil Serv. Comm'n v. McDougal*, 198 Ark. 388, 129 S.W.2d 589 (1939), overruled in part on other grounds by *Tovey v. Jacksonville*, 305 Ark. 401, 808 S.W.2d 740 (1991) (decision under prior law).

Appeals.

—In General.

Legislature has the power to prescribe the mode of procedure on appeals from civil service commission's findings. *Civil Serv. Comm'n v. Matlock*, 205 Ark. 286, 168 S.W.2d 424 (1943), aff'd, 206 Ark. 1145, 178 S.W.2d 662 (1944) (decision under prior law).

An appeal from an order of the civil service commission after a hearing on a petition for reinstatement is not proper, as the sole remedy for a decision of dismissal by the commission is through appeal of the order of dismissal as provided in this section. *Hot Springs Civil Serv. Comm'n v. Miles*, 238 Ark. 956, 385 S.W.2d 930 (1965).

Where notice of termination of employment was given by a civil service commission pursuant to its rules and regulations, the commission was the real party in interest in the ensuing litigation and, as the real party in interest, was the proper

party to give the notice of appeal. *Civil Serv. Comm'n v. Reid*, 261 Ark. 42, 546 S.W.2d 413 (1977).

—Circuit Court.

Legislature has the right, in authorizing a civil service commission, to vest in the circuit court the power to review judicially, either by way of original proceeding or by way of appeal, actions of the commission. *Civil Serv. Comm'n v. Matlock*, 205 Ark. 286, 168 S.W.2d 424 (1943), *aff'd*, 206 Ark. 1145, 178 S.W.2d 662 (1944) (decision under prior law).

Requirements of former similar statute amounted to provision for a trial of matters de novo in circuit court. *Civil Serv. Comm'n v. Matlock*, 205 Ark. 286, 168 S.W.2d 424 (1943), *aff'd*, 206 Ark. 1145, 178 S.W.2d 662 (1944) (decision under prior law).

In proceeding to review order of civil service commission, circuit court erred in submitting case to a jury for trial. *Civil Serv. Comm'n v. Matlock*, 205 Ark. 286, 168 S.W.2d 424 (1943), *aff'd*, 206 Ark. 1145, 178 S.W.2d 662 (1944) (decision under prior law).

Phrase "further or other evidence" in former similar statute meant testimony in addition to that heard at the hearing before the civil service commission and indicated that the legislature intended that the testimony taken before the commission should be brought into the record for trial in circuit court, and the logical inference was that the party appealing should bring up this testimony, duly authenticated by the commission, or otherwise shown to be the testimony. *Civil Serv. Comm'n v. Matlock*, 205 Ark. 286, 168 S.W.2d 424 (1943), *aff'd*, 206 Ark. 1145, 178 S.W.2d 662 (1944) (decision under prior law).

While it would have been better practice to file in the circuit court a verbatim record of the testimony before civil service commission, circuit court did not err in permitting the filing of a transcript that the commission certified as being the substance of the testimony heard before it. *Civil Serv. Comm'n v. Matlock*, 205 Ark. 286, 168 S.W.2d 424 (1943), *aff'd*, 206 Ark. 1145, 178 S.W.2d 662 (1944) (decision under prior law).

Circuit court properly ordered records of civil service commission certified for purpose of determining validity of actions

of the commission. *Terry v. Little Rock Civil Serv. Comm'n*, 216 Ark. 322, 225 S.W.2d 13 (1949) (decision under prior law).

On appeal from civil service commission, circuit court is entitled to hear matter de novo by consideration of findings of commission and by taking additional evidence. *City of Little Rock v. Newcomb*, 219 Ark. 74, 239 S.W.2d 750 (1951).

On appeal, circuit court should give great weight to finding by civil service commission, if evidence is conflicting or evenly balanced. *City of Little Rock v. Newcomb*, 219 Ark. 74, 239 S.W.2d 750 (1951).

In enacting this section, the legislature intended to provide for a de novo hearing by the circuit court on the record before the civil service commission and any additional competent testimony that either party might desire to introduce. *Campbell v. City of Hot Springs*, 232 Ark. 878, 341 S.W.2d 225 (1961); *Daley v. City of Little Rock*, 36 Ark. App. 80, 818 S.W.2d 259 (1991).

Inasmuch as state statute prohibited judicial review of a police pension board's denial of a police officer's application for a pension, circuit court's unappealed dismissal of a mandamus suit, in which the police officer sought to compel the board to award him a pension, was not *res judicata* as to the police officer's civil rights suit in the federal courts. *Hirrell v. Merriweather*, 629 F.2d 490 (8th Cir. 1980).

—Supreme Court.

Legislature intended that rule as to affirmance or reversal by Supreme Court of the findings of lower court on questions of fact should prevail. *Civil Serv. Comm'n v. Matlock*, 205 Ark. 286, 168 S.W.2d 424 (1943), *aff'd*, 206 Ark. 1145, 178 S.W.2d 662 (1944) (decision under prior law).

Appeal from circuit court under this section is not trial de novo in Supreme Court; rather, it determines whether verdict or finding of fact is sustained by substantial evidence. *Petty v. City of Pine Bluff*, 239 Ark. 49, 386 S.W.2d 935 (1965).

Circuit court judgment affirming findings of civil service commission reversed where neither the notice of discharge nor the findings of the commission upholding the dismissal of a police lieutenant contained a statement of the rules and regulations that the officer allegedly violated.

Magness v. Shock, 262 Ark. 148, 554 S.W.2d 342 (1977).

Discharges.

—In General.

Charges that officer was unfit to serve on police force because his word was of no value, and no confidence can be placed in him, if true, justified his dismissal. *Civil Serv. Comm'n v. Cruse*, 192 Ark. 86, 89 S.W.2d 922 (1936) (decision under prior law).

Police officer's failure to comply with promise to resign, made for the purpose of obtaining a dismissal of charges pending against him, fortified his dismissal upon failure to comply with his part of the agreement on ground his conduct constituted a fraud upon the civil service commission. *Civil Serv. Comm'n v. Cruse*, 192 Ark. 86, 89 S.W.2d 922 (1936) (decision under prior law).

City had the right, acting in good faith, to pass ordinance abolishing the office of chief of police, since former similar statute did not prevent the abolishing, by the proper municipal authority, of an office held by a civil service employee when done in good faith. *Ellis v. Allen*, 202 Ark. 1007, 154 S.W.2d 815 (1941) (decision under prior law).

Where special patrolman appointed during emergency through error was certified for permanent position, but failed civil service examinations and was discharged upon expiration of emergency, patrolman could not challenge actions of civil service commission on ground of estoppel, as commission not only had the right to correct error, but was under a duty to do so. *Terry v. Little Rock Civil Serv. Comm'n*, 216 Ark. 322, 225 S.W.2d 13 (1949) (decision under prior law).

Police officer who admitted regularly working in a gambling house during his time off was properly dismissed from the police force. *Campbell v. City of Hot Springs*, 232 Ark. 878, 341 S.W.2d 225 (1961).

Where discharged fireman was given a grievance hearing, and his only right to appeal was under this section, which does not deal with failure to grant a promotion, he exhausted all administrative remedies available to him. *City of Ft. Smith v. Driggers*, 305 Ark. 409, 808 S.W.2d 748 (1991).

—Evidence.

Evidence was held to support civil service commission's findings in proceeding to dismiss chief of detectives charged with being drunk while on duty. *Civil Serv. Comm'n v. McDougal*, 198 Ark. 388, 129 S.W.2d 589 (1939), overruled in part on other grounds by *Tovey v. Jacksonville*, 305 Ark. 401, 808 S.W.2d 740 (1991) (decision under prior law).

Testimony of witnesses who knew only of a police officer's performance and mental state subsequent to dismissal should not have been allowed, since this testimony did not bear on whether the dismissal was proper at the time; his subsequent activities or his ability to perform had nothing to do with his ability to perform earlier and whether the incidents reported were violations of the rules and regulations of the police department for which dismissal was warranted. *City of Little Rock v. Bates*, 270 Ark. 860, 607 S.W.2d 68 (Ct. App. 1980).

—Trials.

Former similar statute did not prevent the dismissal of a city officer without a hearing where his office was abolished for economic reasons. *Fiveash v. Holderness*, 190 Ark. 264, 78 S.W.2d 820 (1935).

Dismissal hearing did not afford person even the barest essentials of due process of law where he was not given prior notice of charges, where even at the hearing he was refused any statement of particular incidents, and where no persons were brought forward to substantiate any of the reasons advanced for termination. *Parks v. Goff*, 483 F. Supp. 502 (E.D. Ark. 1980).

This section limits the right to a trial to threatened discharge or reduction in rank or compensation, and nothing in this section suggests the legislature intended that the civil service commission, in addition to the other duties imposed, must also hear minor employee grievances. *Stafford v. City of Hot Springs*, 276 Ark. 466, 637 S.W.2d 553 (1982).

Where accident review committee found that an accident in which a fire fighter was involved was preventable, and the committee assessed three penalty points against the fire fighter's driving record, the fire fighter was not entitled to a trial before the civil service commission under this section, because he was not discharged, suspended, or reduced in rank or

compensation, although his accumulation of penalty points increased his susceptibility to those sanctions. *Stafford v. City of Hot Springs*, 276 Ark. 466, 637 S.W.2d 553 (1982).

—Notice.

Where city had regulation that a department head could not be discharged without notification in writing from the governing body of city, city administrator alone did not have authority to discharge the chief of the municipal fire department. *Sanders v. City of Ft. Smith*, 251 Ark. 494, 473 S.W.2d 182 (1971).

Notice to person of the charges resulting in his dismissal was clearly inadequate where he was not informed of any specific conduct or occasion of an alleged violation, where he was not informed of the names of any person who supplied information of any alleged violation, and where he was not informed of the substance of any such information known to the city council. *Parks v. Goff*, 483 F. Supp. 502 (E.D. Ark. 1980).

Reductions in Rank.

Finding that officer neglected his duty so as to warrant his demotion was not against weight of the evidence. *Civil Serv. Comm'n v. Matlock*, 205 Ark. 286, 168 S.W.2d 424 (1943), *aff'd*, 206 Ark. 1145, 178 S.W.2d 662 (1944) (decision under prior law).

Suspensions.

Where police officer was discharged for slapping a suspected felon after a finding by the civil service commission that he had violated regulations, circuit court could reduce punishment to a 30-day suspension, even though they confirmed finding of the commission that he had violated regulations. *City of Little Rock v. Hall*, 249 Ark. 337, 459 S.W.2d 119 (1970).

Summary judgment for police officer was proper in suit for lost wages brought

by police officer who was indefinitely suspended without pay pending investigation into criminal charges where the issues of fact were uncontroverted except as to whether indefinite suspension was justified and the court concluded, as a matter of law, that § 14-51-301 precluded suspension without pay in excess of 30 days. *City of N. Little Rock v. Montgomery*, 261 Ark. 16, 546 S.W.2d 154 (1977).

A suspension without pay is not equivalent to a reduction in compensation for the purposes of determining whether a suspended civil service employee is entitled to a trial. *Honeycutt v. City of Fort Smith*, 327 Ark. 530, 939 S.W.2d 306 (1997).

While the civil service statutes provide that a firefighter or police officer is entitled to a trial when discharged or reduced in rank or compensation, the statutes do not require a trial for a ten-day disciplinary suspension. *Honeycutt v. City of Fort Smith*, 327 Ark. 530, 939 S.W.2d 306 (1997).

Wrongful Suspension, Etc.

Where the city administrator attempted to fire the fire chief, but no lawful discharge was shown, the chief, if he so elected, could prove his net damages under this section in circuit court. *Sanders v. City of Ft. Smith*, 251 Ark. 494, 473 S.W.2d 182 (1971).

Word "loss" in subsection (f) does not include attorney's fees, as the General Assembly did not intend for the generic and relative term of "loss" to have such a meaning. *Williams v. Little Rock Civil Serv.*, 266 Ark. 599, 587 S.W.2d 42 (1979).

Cited: *Briley v. Little Rock Civil Serv. Comm'n*, 266 Ark. 394, 583 S.W.2d 78 (1979); *Wammack v. City of Batesville*, 522 F. Supp. 1006 (E.D. Ark. 1981); *Dalton v. City of Russellville*, 290 Ark. 603, 720 S.W.2d 918 (1986); *Williams v. Taylor*, 311 Ark. 94, 841 S.W.2d 618 (1992).

14-51-309. Reduction in personnel.

In event that it shall be necessary to reduce the personnel of any department affected by this chapter, reduction shall be done from the lowest rank, seniority having priority.

History. Acts 1933, No. 28, § 15; Pope's Dig., § 9959; A.S.A. 1947, § 19-1615.

14-51-310. Transfers prohibited.

No person in any department affected by this chapter shall be transferred from one (1) department to another.

History. Acts 1933, No. 28, § 14; Pope's Dig., § 9958; A.S.A. 1947, § 19-1614.

14-51-311. Political discrimination prohibited.

No person in any department affected by this chapter shall be appointed, reduced, suspended, discharged, or otherwise discriminated against because of his political opinion or affiliation.

History. Acts 1933, No. 28, § 11; Pope's Dig., § 9955; A.S.A. 1947, § 19-1611.

CHAPTER 52**MUNICIPAL POLICE DEPARTMENTS****SUBCHAPTER**

1. GENERAL PROVISIONS.
2. CITIES OF THE FIRST CLASS.
3. BILL OF RIGHTS FOR LAW ENFORCEMENT OFFICERS.

RESEARCH REFERENCES

ALR. Requirement of residency within or near specified governmental unit as condition of continued employment for policemen or firemen. 4 ALR 4th 380.

Liability of governmental unit or its officers for injury to innocent occupant of moving vehicle, or for damages to such vehicle, as result of police chase. 4 ALR 4th 865.

Liability for failure of police response to emergency call. 39 ALR 4th 691.

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., § 114.

C.J.S. 62 C.J.S., Mun. Corp., § 563 et seq.

87 C.J.S., Towns, §§ 60, 70, 71.

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

- 14-52-101. Authorized in cities.
- 14-52-102. Authorized in towns.
- 14-52-103. City marshal option.
- 14-52-104. Police powers generally.
- 14-52-105. Holiday compensation.
- 14-52-106. Annual vacation.

SECTION.

- 14-52-107. Uniform sick leave.
- 14-52-108. Monthly payroll incentives.
- 14-52-109. Participation in political activities.
- 14-52-110. Fees for serving city warrants.
- 14-52-111. Fees for bail or delivery bond.

A.C.R.C. Notes. References to "this subchapter" in §§ 14-52-101 — 14-52-107 may not apply to §§ 14-52-108 — 14-52-111, which were enacted subsequently.

Cross References. Appointment of police chiefs, §§ 14-42-110, 14-47-120, 14-48-117.

Civil service for police departments, § 14-51-101 et seq.

Departments of public safety, § 14-42-401 et seq.

Police pension and relief funds, § 24-11-101 et seq.

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

Acts 1937, No. 250, § 24: approved Mar. 16, 1937. Emergency clause provided: "This Act being necessary for the peace, preservation and public health, an emergency is hereby declared and this Act shall take effect from and after its passage."

Acts 1939, No. 11, § 3: approved Jan. 24, 1939. Emergency clause provided: "Because of the fact that there are needy members of the Police Departments of the Cities of this State who are entitled to receive pensions under Act 250 of the Acts of the General Assembly of 1937, and funds provided to pay such pensions are insufficient, resulting in deprivation to those entitled to relief, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after its passage."

Acts 1969, No. 68, § 3: Feb. 18, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that in order to attract qualified and capable policemen, it is necessary to offer an adequate pension in the case of retirement; that under the present provisions, policemen in border cities are required to contribute only two and one-half percent of their monthly salaries to such pension fund instead of four percent as in the case of other cities; that an increase in the amount of contributions to such fund will permit the payment of a more adequate pension to such policemen upon retirement; and that in order to provide adequate funds to grant sufficient pensions for retired policemen, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the

public peace, health and safety shall become effective from and after its passage and approval."

Acts 1969, No. 393, § 5: Apr. 11, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present sick leave provisions are not adequate to provide for the essential sick leave of policemen in cities of the first and second class; that the existing provisions for sick leave are not uniform; and that in order to remedy this situation, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1971, No. 241, § 5: Mar. 9, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing sick leave provisions as to fire fighters are not adequate to provide for the essential sick leave of such fire fighters in cities of the first and second class; that the existing provisions for sick leave are not uniform; and that only by the passage of this Act can this situation be properly remedied. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall become effective from and after its passage and approval."

Acts 1981, No. 486, § 4: Jan. 1, 1982.

Acts 1981, No. 668, § 3: Mar. 23, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that there appears to be no law authorizing incorporated towns to organize police departments and that such authorization is immediately necessary to provide for the security of the citizens of incorporated towns. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 864, § 3: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that incorporated towns do not now have the power of organizing police departments, and that such flexibility should be allowed incorporated towns in order to better provide for the security of

the inhabitants thereof; and that this Act is necessary to grant such authority. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 46, § 3: Feb. 3, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the restoration of service credit is necessary in certain instances to retain qualified police officers and that this Act is immediately necessary to provide for such service credit. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 501, § 2: Mar. 17, 1983. Emergency clause provided: "Whereas, there is great confusion over the powers of Municipal Police and Marshals over municipally owned or leased property located outside the corporate limits of such municipality and the police jurisdiction should be clarified; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate protection of the public peace, health, and safety, shall take effect immediately upon its passage and approval."

Acts 1985, No. 240, § 3: Mar. 4, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present sick leave law applicable to police officers has been misconstrued as not applying to certain municipal police officers, such as city marshals; that such misinterpretation has resulted in inequity; that all law enforcement officers employed by municipalities in this State should receive the benefits of the sick leave law; and that this Act is immediately necessary to accomplish the same. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 252, § 3: Mar. 4, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws pertaining to the compensation for municipal policemen and firemen for holidays is obsolete and contradictory; that this Act clarifies the law in that area and should be given effect immediately to eliminate the confusion and avoid expensive and unnecessary litigation. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-52-101. Authorized in cities.

The city council shall have power to establish a city police department, to organize it under the general superintendence of the mayor, and to prescribe its duties and define its powers in such manner as will most effectually preserve the peace of the city, secure the citizens thereof from personal violence, and safeguard their property from fire and unlawful depredations.

History. Acts 1875, No. 1, § 6, p. 1; C. & M. Dig., § 7594; Pope's Dig., § 9680; Acts 1983, No. 501, § 1; A.S.A. 1947, § 19-1701.

CASE NOTES

Cited: Conner v. Burnett, 216 Ark. 559, 226 S.W.2d 984 (1950).

14-52-102. Authorized in towns.

The governing body of any incorporated town may establish a police department for the town, prescribe its duties, and define its powers in such manner as will most effectively preserve the peace of the town, secure the citizens thereof from personal violence, and safeguard their property from unlawful deprivations.

History. Acts 1981, No. 668, § 1;
A.S.A. 1947, § 19-1701.1.

14-52-103. City marshal option.

Notwithstanding any other provision of law to the contrary, the governing body of any incorporated town or city of the second class may, by ordinance, establish either a police department or a city marshal's office.

History. Acts 1981, No. 864, § 1; A.S.A. of the second class, §§ 14-44-109 — 14-44-113, § 19-1701.2.

Cross References. Marshalls in cities

14-52-104. Police powers generally.

Municipal police officers and city marshals shall have the same police powers on municipally owned or leased property located outside the corporate limits of the municipality that they exercise within the corporate limits of the municipality.

History. Acts 1875, No. 1, § 6, p. 1; C. Acts 1983, No. 501, § 1; A.S.A. 1947, & M. Dig., § 7594; Pope's Dig., § 9680; § 19-1701.

CASE NOTES

Cited: Conner v. Burnett, 216 Ark. 559, 226 S.W.2d 984 (1950).

14-52-105. Holiday compensation.

(a) All law enforcement officers regardless of their titles, such as city marshal, employed by cities of the first or second class or incorporated towns shall be compensated for all legal holidays established by the governing body of the municipality.

(b) This compensation shall be based on the law enforcement officer's daily rate of pay and in addition to the regular pay schedule.

(c) This compensation may be included within the officer's base pay.

(d) This compensation shall be prorated and paid during the regular payroll periods or paid in one (1) lump sum annually on a date in December designated by the municipality.

History. Acts 1985, No. 252, § 1; A.S.A. 1947, § 19-1721; Acts 1987, No. 501, § 1. **Publisher's Notes.** Acts 1985, No. 252, § 1, is also codified as § 14-53-106.

CASE NOTES

ANALYSIS

All legal holidays.
Lump sum.
Payment required.
Right of action.
Payment for unused leave.

All Legal Holidays.

Police officers are to be paid for all of the legal holidays whether or not they work on such holidays. *Deason v. Rogers*, 247 Ark. 1061, 449 S.W.2d 410 (1970) (decision under prior law).

Lump Sum.

City violated this section when it reduced regular salaries of law enforcement officers in order to begin paying holiday compensation in one lump sum. *City of Pocahontas v. Huddleston*, 309 Ark. 353, 831 S.W.2d 138 (1992).

Payment Required.

City cannot nullify legislation providing for payment of holidays to retired police

officers by refusing to pass an ordinance or make an appropriation. *City of Piggott v. Woodard*, 261 Ark. 406, 549 S.W.2d 278 (1977) (decision under prior law).

Right of Action.

A police officer may sue a municipality to collect the amount due him and is not limited to an action to compel the appropriate official to make payment. *Deason v. Rogers*, 247 Ark. 1061, 449 S.W.2d 410 (1970) (decision under prior law).

Payment for Unused Leave.

City cannot nullify legislation providing for payment of accumulated sick leave to retired police officers by refusing to pass an ordinance or make an appropriation. *City of Piggott v. Woodard*, 261 Ark. 406, 549 S.W.2d 278 (1977).

14-52-106. Annual vacation.

The head or chief of each police department shall arrange that each employee shall be granted an annual vacation of not less than fifteen (15) working days with full pay.

History. Acts 1937, No. 250, § 2; Pope's Dig., § 9857; Acts 1939, No. 11, §§ 1, 2; 1953, No. 86, § 1; 1957, No. 415, § 1; 1963, No. 211, § 1; 1969, No. 68, § 1; 1981, No. 486, § 2; 1983, No. 46, § 1; A.S.A. 1947, § 19-1802.

Publisher's Notes. Acts 1937, No. 250, § 2, as amended, is also codified as § 24-11-429.

14-52-107. Uniform sick leave.

(a)(1) From and after April 11, 1969, all law enforcement officers, regardless of their titles, such as city marshal, employed by cities of the first and second class or incorporated towns shall accumulate sick leave at the rate of twenty (20) working days per year beginning one (1) year after the date of employment.

(2) If unused, sick leave shall accumulate to a maximum of sixty (60) days unless the city or town, by ordinance, authorizes the accumulation of a greater amount, in no event to exceed a maximum accumulation of ninety (90) days, except for the purpose of computing years of service for retirement purposes.

(b)(1) In cities having sick leave provisions through ordinance, the total sick leave accumulated by the individual officer shall be credited

to him and new days accumulated under the provisions of this section until the maximum prescribed in subsection (a) of this section is reached.

(2) Time off may be charged against accumulated sick leave only for such days that an officer is scheduled to work. No such sick leave as provided in this section shall be charged against any officer during any period of sickness, illness, or injury for any days which the officer is not scheduled to work.

(c) If, at the end of his term of service, upon retirement or death whichever occurs first, any police officer has unused accumulated sick leave, he shall be paid for this sick leave at the regular rate of pay in effect at the time of retirement or death. Payment for unused sick leave in the case of a police officer, upon retirement or death, shall not exceed sixty (60) days salary unless the city, by ordinance, authorizes a greater amount, but in no event to exceed ninety (90) days salary.

History. Acts 1969, No. 393, §§ 1-3; 1971, No. 241, §§ 1-3; 1983, No. 842, §§ 1-3; 1985, No. 181, § 1; 1985, No. 240, § 1; 1985, No. 892, § 1; A.S.A. 1947, §§ 19-1718 — 19-1720.

Publisher's Notes. Acts 1969, No. 393, §§ 1-3, as amended, are also codified as § 14-53-108.

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

CASE NOTES

Constitutionality.

Legislation granting additional pay to retired police officers for accumulated sick leave is not unconstitutional as singling out certain employees for special privileges not afforded all municipal employees, since the legislative classification is founded upon a reasonable basis and op-

erates uniformly upon the class to which it applies. *City of Piggott v. Woodard*, 261 Ark. 406, 549 S.W.2d 278 (1977).

Cited: *City of Ft. Smith v. Brewer*, 255 Ark. 813, 502 S.W.2d 643 (1973); *Combs v. Cheek*, 283 Ark. 69, 671 S.W.2d 177 (1984).

14-52-108. Monthly payroll incentives.

All cities of the first class, cities of the second class, and incorporated towns may establish monthly payroll incentives for police officers in their employ based upon professional certificates of training conferred upon the officer by the Arkansas Commission on Law Enforcement Standards and Training or equivalent certificates acquired from another state.

History. Acts 1991, No. 370, § 1.

A.C.R.C. Notes. References to "this subchapter" in §§ 14-52-101 — 14-52-107 may not apply to this section which was enacted subsequently.

Cross References. Commission and advisory board on standards and training, § 12-9-101 et seq.

14-52-109. Participation in political activities.

Notwithstanding any law to the contrary, law enforcement officers of cities and incorporated towns shall not be prohibited from engaging in political activities except when on duty, when in uniform, or when acting in an official capacity, nor shall they be denied the right to refrain from engaging in political activities.

History. Acts 1991, No. 580, § 1.

A.C.R.C. Notes. References to “this subchapter” in §§ 14-52-101 — 14-52-107 may not apply to this section which was enacted subsequently.

Cross References. Political activity by law enforcement officers of cities or incorporated towns, § 14-52-306.

14-52-110. Fees for serving city warrants.

(a) For serving city warrants only, the chief of police of a city of the second class, or his deputies, shall be entitled to the fees allowed to the sheriffs under § 21-6-307 for similar services in similar cases.

(b) All fees collected by the police chief and his deputies for similar services shall be paid over to the city treasury.

History. Acts 1993, No. 459, § 1.

A.C.R.C. Notes. References to “this subchapter” in §§ 14-52-101 — 14-52-107

may not apply to this section which was enacted subsequently.

14-52-111. Fees for bail or delivery bond.

Every municipal police department in this state is authorized to charge and collect a ten dollar (\$10.00) fee for taking and entering every bail or delivery bond.

History. Acts 1997, No. 252, § 1.

A.C.R.C. Notes. References to “this subchapter” in §§ 14-52-101 — 14-52-107

may not apply to this section which was enacted subsequently.

SUBCHAPTER 2 — CITIES OF THE FIRST CLASS

SECTION.

14-52-201. Number of police officers.

14-52-202. Powers and duties of police chiefs.

SECTION.

14-52-203. Duties of police officers.

14-52-204. Power to arrest.

14-52-205. [Repealed.]

Effective Dates. Acts 1875, No. 1,
§ 95: effective on passage.

14-52-201. Number of police officers.

The city council in cities of the first class shall, by general ordinance, direct the number of subordinate police officers to be appointed.

History. Acts 1875, No. 1, § 53, p. 1; C. & M. Dig., § 7742; Pope's Dig., § 9938; A.S.A. 1947, § 19-1703.

14-52-202. Powers and duties of police chiefs.

(a) The chief of police in cities of the first class shall execute all process directed to him by the mayor and shall, by himself or by someone else on the police force, attend on the sitting of the police court to execute its orders and preserve order therein.

(b)(1) The chief of police shall have power to appoint one (1) or more deputies from the police force, for whose official acts he shall be responsible, and by whom he may execute all process directed to him.

(2) He shall have power, by himself or by deputy, to execute all such process in any part of the county in which the police court is situated or in which the municipal court has jurisdiction.

(3) For serving city warrants only, the chief of police or his deputies shall be entitled to the fees allowed to the sheriffs under § 21-6-307 for similar services in similar cases.

(4) All fees collected by the police chief and his deputies for similar services shall be paid over to the city treasury.

(c) It shall be the chief of police's duty to suppress all riots, disturbances, and breaches of the peace. To that end he may call upon the citizens to assist him to apprehend all persons in the act of committing any offense against the laws of the state or the ordinances of the city, and he shall bring them immediately before the proper authority for examination or trial.

(d) The chief of police shall have power to pursue or arrest any person fleeing from justice in any part of the state and to receive and execute any proper authority for arrest and detention of criminals fleeing or escaping from any other place or state.

(e) The chief of police shall have, in the discharge of his proper duties, like powers, and shall be subject to like responsibilities as sheriffs and constables in similar cases, and shall be required by the city council to give a bond for the faithful performance of his duties, in such sum as such council may require.

History. Acts 1875, No. 1, § 52, p. 1; C. & M. Dig., § 7703; Pope's Dig., § 9846; A.S.A. 1947, § 19-1702; Acts 1989, No. 726, § 1.

A.C.R.C. Notes. The operation of that portion of subsection (e) of this section relating to provision of a bond was suspended by adoption of a self-insured fidel-

ity bond program for public officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The subsection may again become effective upon cessation of coverage under that program. See § 21-2-703.

Cross References. Self-Insured Fidelity Bond Program, § 21-2-701 et seq.

CASE NOTES

ANALYSIS

In general.
Liability.
Suspension.

In General.

It is the police chief of a municipality who is given authority to suppress breaches of the peace, an arguably policy-making position. *Miller v. Compton*, 122 F.3d 1094 (1997).

Liability.

The argument in an action under 42 U.S.C. § 1983 that a superior should be made liable for a subordinate's decision,

although clothed in terms from this section, is no more than an attempt to impose liability under a theory of respondeat superior, a theory of recovery precluded under 42 U.S.C. § 1983. *Miller v. Compton*, 122 F.3d 1094 (1997).

Suspension.

The authority to draft citizens into service granted by subsection (c) of this section cannot undo a police officer's suspension. *Arkansas State Police v. Davis*, 45 Ark. App. 40, 870 S.W.2d 408 (1994), reh'g denied.

Cited: *Wing v. Britton*, 748 F.2d 494 (8th Cir. 1984).

14-52-203. Duties of police officers.

(a) In cities of the first class, the duty of the chief of police and other officers of the police department shall be under the direction of the mayor.

(b) It shall be their duty to:

(1) Suppress all riots, disturbances, and breaches of the peace;

(2) Pursue and arrest any person fleeing from justice in any part of this state;

(3) Apprehend any and all persons in the act of committing any offenses against the laws of the state or the ordinances of the city and forthwith bring the persons before the proper authority for trial or examination; and

(4) Diligently and faithfully enforce at all times all such laws, ordinances, and regulations for the preservation of good order and the public welfare as the city council may ordain. For this purpose, they shall have all the power of constables.

History. Acts 1875, No. 1, § 53, p. 1; C. & M. Dig., § 7704; Pope's Dig., § 9847; A.S.A. 1947, § 19-1705.

CASE NOTES

Off Duty.

A police officer is, in a sense, on duty 24 hours a day, seven days a week and is not relieved of his obligation to preserve the peace while "off duty." *Gibson v. State*, 316 Ark. 705, 875 S.W.2d 58 (1994).

Cited: *Meyers v. State*, 253 Ark. 38, 484 S.W.2d 334 (1972); *State v. Osborn*, 263 Ark. 554, 566 S.W.2d 139 (1978).

14-52-204. Power to arrest.

In cities of the first class, the mayor or a police officer of the city may, upon view, arrest any person who may be guilty of a breach of the ordinances of the city or of any crime against the laws of the state and may, upon reasonable information supported by affidavit, procure process for the arrest of any person who may be charged with a breach of any ordinance of the city.

History. Acts 1875, No. 1, § 53, p. 1;
A.S.A. 1947, § 19-1706.

RESEARCH REFERENCES

Ark. L. Rev. Search of the Person Incident to a Lawful Arrest, 28 Ark. L. Rev. 79.

CASE NOTES

Off Duty.

Though patrolman for police department was employed as a security guard for a motel and was off duty as a patrol-

man at the time of an arrest in the motel, defendant was guilty of resisting the arrest. *Meyers v. State*, 253 Ark. 38, 484 S.W.2d 334 (1972).

14-52-205. [Repealed.]

Publisher's Notes. This section, concerning hours of work in cities of 25,000 or more, was repealed by Acts 1995, No. 555, § 1. The section was derived from Acts

1955, No. 78, § 1; 1965, No. 564, § 1; A.S.A. 1947, § 19-1712; Acts 1987, No. 984, § 1.

SUBCHAPTER 3 — BILL OF RIGHTS FOR LAW ENFORCEMENT OFFICERS

SECTION.

- 14-52-301. Purpose.
- 14-52-302. Definitions.
- 14-52-303. Disciplinary proceedings.
- 14-52-304. Disclosure not required for promotion or assignment.
- 14-52-305. Notification of personnel action.

SECTION.

- 14-52-306. Participation in political activities.
- 14-52-307. No retaliation for exercise of rights — Other legal remedies.

14-52-301. Purpose.

(a) The purpose of this subchapter is to recommend a basic Bill of Rights for law enforcement officers of cities and incorporated towns in Arkansas.

(b) Any municipality shall have the authority to adopt a local ordinance establishing any or all of these procedures as a guide for negotiating personnel issues with their law enforcement officers.

History. Acts 1991, No. 564, § 1.

14-52-302. Definitions.

As used in this subchapter:

(1) "Law enforcement officer" means any public servant vested by law with a duty to maintain order or to make arrests for offenses;

(2) "Complainant" means the person or persons providing the information constituting the basis for official departmental charges alleging improper conduct;

(3) "Official departmental charges" means a written document from the chief of police, or other lawful authority, notifying the accused law enforcement officer that charges of misconduct have been made and setting forth the specifics of the alleged misconduct;

(4) "Formal proceeding" means a proceeding heard before any officer, committee, or other body of city government with the authority to take disciplinary action against a law enforcement officer.

History. Acts 1991, No. 564, § 2.

14-52-303. Disciplinary proceedings.

Whenever a law enforcement officer is under investigation for alleged improper conduct with a possible result of termination, demotion, or other disciplinary action causing loss of pay or status, the following minimum standards may apply:

(1) No adverse inference shall be drawn and no punitive action taken from a refusal of the law enforcement officer being investigated to participate in such investigation or be interrogated other than when such law enforcement officer is on duty, or is otherwise fully compensated for such time spent in accordance with city and departmental overtime policy and state and federal law.

(2) Any interrogation of a law enforcement officer shall take place at the office of those conducting the investigation, the place where such law enforcement officer reports for duty, or such other reasonable place as the investigator may determine.

(3) The law enforcement officer being investigated shall be informed, at the commencement of his or her interrogation, of:

(A) The nature of the investigation;

(B) The identity and authority of the person or persons conducting the investigation; and

(C) The identity of all persons present during the interrogation.

(4) During the interrogation of the law enforcement officer, questions will be posed by or through only one (1) interrogator at a time.

(5) Any interrogation of a law enforcement officer in connection with an investigation shall be for a reasonable period of time and shall allow for reasonable periods for the rest and personal necessities of such law enforcement officer.

(6) No threat, harassment, promise, or reward shall be made to any law enforcement officer in connection with an investigation in order to induce the answering of any questions that the law enforcement officer

has a legal right to refrain from answering, but immunity from prosecution may be offered to induce such response.

(7) All interrogations of a law enforcement officer in connection with an investigation against him or her shall be recorded in full. The law enforcement officer shall be allowed to make his or her own independent recording of his or her interrogation and have one (1) witness of his or her choosing present. The witness must be an attorney or a member of the police department that is in no way related to the matter under investigation.

(8) No formal proceeding which has the authority to administer disciplinary action against a law enforcement officer may be held except upon official departmental charges.

(9) Official departmental charges shall contain the specific conduct that is alleged to be improper, the date and the time of the alleged misconduct, the witnesses whose information provided the basis for the charges, and the specific rules, regulations, orders, or laws alleged to have been violated.

(10) Any law enforcement officer under official departmental charges shall be entitled to a predisciplinary hearing before the chief of police if the disciplinary action is being considered. At such hearing, the law enforcement officer shall have the opportunity to have a person of his or her choosing present.

(11) No formal proceeding which has authority to penalize a law enforcement officer may be brought except upon charges signed by the person making those charges.

History. Acts 1991, No. 564, § 3.

14-52-304. Disclosure not required for promotion or assignment.

No law enforcement officer shall be required to disclose for the purposes of promotion or assignment, any item of his property, income, assets, debts, or expenditures, or those of any member of such officer's household.

History. Acts 1991, No. 564, § 4.

14-52-305. Notification of personnel action.

Whenever a personnel action which may result in any loss of pay or benefits or status, such law enforcement officer shall be notified of such pending action by written official departmental charges a reasonable time before such action is taken except where exigent circumstances otherwise require.

History. Acts 1991, No. 564, § 5.

14-52-306. Participation in political activities.

Except when on duty or acting in his or her official capacity, no law enforcement officer of a city or incorporated town shall be prohibited from engaging in political activity or be denied the right to refrain from engaging in such activity.

History. Acts 1991, No. 564, § 8.

Political activity of public employees permitted, § 21-1-207.

Cross References. Political activity by municipal law enforcement officers, § 14-52-109.

14-52-307. No retaliation for exercise of rights — Other legal remedies.

(a) There shall be no penalty nor threat of any penalty for the exercise by a law enforcement officer of his rights under this Bill of Rights.

(b) Nothing in this Bill of Rights shall disparage or impair any other legal remedy any law enforcement officer shall have with respect to any rights under this Bill of Rights.

History. Acts 1991, No. 564, §§ 6, 7.

CHAPTER 53

MUNICIPAL FIRE DEPARTMENTS

SECTION.

14-53-101. Establishment in cities.

14-53-102. Fire fighting beyond municipal limits.

14-53-103. [Repealed.]

14-53-104. [Repealed.]

14-53-105. Arrangement of members' hours — Emergencies.

14-53-106. Holiday compensation.

SECTION.

14-53-107. Annual vacation.

14-53-108. Uniform sick leave.

14-53-109. [Repealed.]

14-53-110. Reimbursement of fire fighters.

14-53-111. Bonus compensation plans.

14-53-112. Fire marshal may be armed.

Cross References. Appointment of fire chiefs, § 14-42-110, 14-47-120, 14-48-117.

Civil service for fire departments, § 14-51-101 et seq.

Departments of public safety, § 14-42-401 et seq.

Firemen's relief and pension funds, § 24-11-801 et seq.

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

Acts 1923, No. 135, § 5: effective on passage.

Acts 1947, No. 240, § 2: Mar. 18, 1947. Emergency clause provided: "It is found that firemen have been working an excessive number of hours each week and that

this condition should be corrected in the interest of public safety. An emergency is therefore declared to exist and this act shall be in full force and effect from and after its passage and approval."

Acts 1969, No. 326, § 4: Mar. 26, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the maximum work week for firemen is prescribed by law as 72 hours per week; that a work week of 72 hours is unduly long and that firemen cannot give the best service to the people of this State when required to work 72 hours per week; that the maximum work week of firemen in certain cities must be reduced in order

that such firemen can provide the best possible fire protection to the residents of such cities; and that this Act is immediately necessary to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1969, No. 393, § 5: Apr. 11, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present sick leave provisions are not adequate to provide for the essential sick leave of policemen in cities of the first and second class; that the existing provisions for sick leave are not uniform; and that in order to remedy this situation, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1971, No. 241, § 5: Mar. 9, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing sick leave provisions as to fire fighters are not adequate to provide for the essential sick leave of such fire fighters in cities of the first and second class; that the existing provisions for sick leave are not uniform; and that only by the passage of this Act can this situation be properly remedied. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall become effective from and after its passage and approval."

Acts 1973, No. 278, §§ 2, 4: July 1, 1973. Emergency clause provided: "The General Assembly finds that the maximum work week of firemen in certain cities, which is presently 64 hours per week, must be reduced in order that such firemen can provide the best possible fire protection to the residents of such cities; that Act 151 of 1973 did reduce said max-

imum work week to 56 hours per week, but that the immediate effectiveness of said Act 151 of 1973, caused by the fact that said Act 151 contained an emergency clause, has presented the cities to which said Act 151 applies with a financial problem for which they had not budgeted, and which they need time to meet. It is necessary, therefore, that said Act 151 of 1973 be immediately repealed and replaced by this Act. An emergency is therefore declared to exist, and this Act, being necessary for the public peace, health, and safety, shall be effective immediately upon its passage and approval." Approved March 9, 1973.

Acts 1985, No. 240, § 3: Mar. 4, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present sick leave law applicable to police officers has been misconstrued as not applying to certain municipal police officers, such as city marshals; that such misinterpretation has resulted in inequity; that all law enforcement officers employed by municipalities in this State should receive the benefits of the sick leave law; and that this Act is immediately necessary to accomplish the same. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 252, § 3: Mar. 4, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws pertaining to the compensation for municipal policemen and firemen for holidays is obsolete and contradictory; that this Act clarifies the law in that area and should be given effect immediately to eliminate the confusion and avoid expensive and unnecessary litigation. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Requirement of residency within or near specified governmental unit as

condition of continued employment for policemen or firemen. 4 ALR 4th 380.

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., § 115. **C.J.S.** 62 C.J.S., Mun. Corp., § 591 et seq.

CASE NOTES

Cited: Donaldson v. Taylor, 327 Ark. 93, 936 S.W.2d 551 (1997).

14-53-101. Establishment in cities.

(a) The city council shall establish fire departments and provide them with proper engines and such other equipment as shall be necessary to extinguish fires and preserve the property of the city and of the inhabitants from conflagration.

(b) The council shall promulgate such rules and regulations to govern the department as it shall deem expedient.

History. Acts 1875, No. 1, § 6, p. 1; C. & M. Dig., § 7595; Pope's Dig., § 9681; A.S.A. 1947, § 19-2101.

14-53-102. Fire fighting beyond municipal limits.

(a) In order to prevent the destruction by fire of property located outside the corporate limits of cities and towns and in order to lessen the loss caused on account of insufficient means to combat fires and as a protection against such loss, the city council or other governing body of any city or town having an organized fire department may, by ordinance, provide that the fire fighting machinery and equipment, with the necessary fire fighters to operate it, may be used to combat fires beyond the corporate limits of any city or town, upon such terms, conditions, and restrictions as may be prescribed in the ordinance.

(b)(1) When the organized fire department of a city or town combats a fire beyond the corporate limits of the city or town, a reasonable effort must be made for ninety (90) days to obtain compensation or reimbursement for the services from the property owner involved.

(2) If the city or town is unable to obtain payment or reimbursement from the property owner for the services within the ninety-day period, the county wherein the property is located may reimburse the municipality for the service in an amount not to exceed two hundred dollars (\$200).

(c)(1) Neither the municipality nor any municipal official or fire department official or employee involved in combatting the fire shall be liable for any damages or loss that occurs while the department is combatting the fire outside the corporate limits of the city or town.

(2) The fire fighters shall have the same coverage as they have if they are injured while outside the city limits.

(d) All members of the fire department of any city or town, when engaged in fighting fire beyond the corporate limits of the city or town

under the terms of any ordinance as authorized in this section, shall be considered to be acting within their line of duty and in discharge thereof. No member of the department shall lose or forfeit any right or benefit in rank, pay, disability, or retirement payments and benefits on account of out-of-city or out-of-town activities.

History. Acts 1951, No. 270, §§ 1, 2; 1957, No. 348, § 1; 1973, No. 114, §§ 1, 2; A.S.A. 1947, §§ 19-2106 — 19-2107.

Cross References. Territory annexed by municipality to have fire protection, § 14-40-1212.

14-53-103. [Repealed.]

Publisher's Notes. This section, concerning exemptions for fire fighters from military or jury duty, was repealed by Acts 1997, No. 484, § 1 and No. 214, § 1. The

section was derived from: Acts 1875, No. 1, § 6, p. 1; C. & M. Dig., § 7595; Pope's Dig., § 9681; A.S.A. 1947, § 19-2101.

14-53-104. [Repealed.]

Publisher's Notes. This section, concerning duty hours of fire department employees, was repealed by Acts 1997, No.

214, § 1. The section was derived from Acts 1923, No. 135, § 1; Pope's Dig., § 9852; A.S.A. 1947, § 19-2103.

14-53-105. Arrangement of members' hours — Emergencies.

(a)(1) The uniformed force of the fire department shall be divided into two (2) platoons, the officers and members assigned to which shall alternate on tours of duty at intervals of not more than fifteen (15) days.

(2)(A) The chief of the department shall arrange the working hours of the employees of the department so that each employee shall work, as nearly as practical, an equal number of hours per month, not to exceed seventy-two (72) hours per week.

(B) At his discretion, the chief of the department may require in case of an epidemic, conflagration, or other emergency the employees for a greater period than provided in this section to continue on duty during the epidemic, conflagration, or other emergency.

(b)(1) The uniformed force of fire departments in cities of Arkansas having a population of fifteen thousand (15,000) or more, according to the latest official federal census, shall be divided into platoons.

(2)(A)(i) The chief of the department in cities of this state affected by this subsection shall assign, as nearly as practicable, an equal number of employees of the department to each platoon, so that each employee shall work, as nearly as practicable, an equal number of hours per month, not to exceed an average of fifty-six (56) hours per week for each period of three (3) weeks.

(ii) There shall be no reduction of salaries of employees of the departments because of the number of hours worked during each week as provided in this subsection.

(B) At his discretion the chief of the department may, in case of an epidemic, conflagration, or other emergency, require the employee to

continue on duty for a greater period than provided in this subsection during the epidemic, conflagration, or like emergency.

History. Acts 1923, No. 135, § 2; § 1; 1973, No. 278, § 1; A.S.A. 1947, Pope's Dig., § 9853; Acts 1947, No. 240, §§ 19-2104, 19-2104.1. § 1; 1957, No. 157, § 1; 1969, No. 326,

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Constitutionality.
"Work."

Constitutionality.

That to comply with the provisions of this section restricting a workweek to 72 hours would compel the employment of an additional "platoon" of city fire fighters does not render this section void for want of due process. *Nalley v. Throckmorton*, 212 Ark. 525, 206 S.W.2d 455 (1947).

"Work."

Word "work" as used in this section restricting the working hours to 72 hours per week means the hours spent on duty even though a fire fighter is permitted to sleep. *Nalley v. Throckmorton*, 212 Ark. 525, 206 S.W.2d 455 (1947).

Cited: *Mankin v. Dean*, 228 Ark. 752, 310 S.W.2d 477 (1958).

14-53-106. Holiday compensation.

(a) All fire fighters employed by cities of the first or second class or incorporated towns shall be compensated for all legal holidays established by the governing body of the municipality.

(b) This compensation shall be based on the fire fighter's daily rate of pay and in addition to the regular pay schedule.

(c) This compensation may be included within the fire fighter's base pay.

(d) This compensation shall be prorated and paid during the regular payroll periods or paid in one (1) lump sum annually on a date in December designated by the municipality.

History. Acts 1985, No. 252, § 1; A.S.A. 1947, § 19-1721; Acts 1987, No. 501, § 1. **Publisher's Notes.** Acts 1985, No. 252, § 1, is also codified as § 14-52-105.

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All legal holidays.

Basis.

Included with base pay.

All Legal Holidays.

Fire fighters are to be paid for state legal holidays, but there can be no intent to pay for holidays which do not occur, and in years when there are no elections the number would be fewer. *City of Ft. Smith v. Brewer*, 255 Ark. 813, 502 S.W.2d 643 (1973) (decision under prior law).

Basis.

Holiday pay meant "days with full pay" or eight-hour days rather than twenty-four-hour tours of duty. *City of Ft. Smith v. Brewer*, 255 Ark. 813, 502 S.W.2d 643 (1973) (decision under prior law).

Included with Base Pay.

Lack of pay check identity for holiday pay did not prove failure by city to comply with former statute granting that pay. *Local No. 34, Int'l Ass'n of Fire Fighters v. City of Little Rock*, 256 Ark. 266, 506 S.W.2d 836 (1974) (decision under prior law).

14-53-107. Annual vacation.

The chief of the fire department shall so arrange that each employee shall be granted an annual vacation of not less than fifteen (15) days with full pay.

History. Acts 1923, No. 135, § 3; 1935, No. 73, § 1; Pope's Dig., § 9854; A.S.A. 1947, § 19-2105.

CASE NOTES

Cited: City of Ft. Smith v. Brewer, 255 Ark. 813, 502 S.W.2d 643 (1973).

14-53-108. Uniform sick leave.

(a)(1) From and after April 11, 1969, all fire fighters employed by cities of the first and second class shall accumulate sick leave at the rate of twenty (20) working days per year beginning one (1) year after the date of employment.

(2) If unused, sick leave shall accumulate to a maximum of sixty (60) days unless the city, by ordinance, authorizes the accumulation of a greater amount, in no event to exceed a maximum accumulation of ninety (90) days, except for the purpose of computing years of service for retirement purposes.

(b)(1) In cities having sick leave provisions through ordinance, the total sick leave accumulated by the individual fire fighter shall be credited to him and new days accumulated under the provisions of this section until the maximum prescribed in subsection (a) of this section is reached.

(2) Time off may be charged against accumulated sick leave only for the days that a fire fighter is scheduled to work. No sick leave as provided in this section shall be charged against any fire fighter during any period of sickness, illness, or injury for any days which the fire fighter is not scheduled to work.

(c)(1) If, at the end of his term of service, upon retirement or death, whichever occurs first, any fire fighter has unused accumulated sick leave, he shall be paid for this sick leave at the regular rate of pay in effect at the time of retirement or death.

(2) Payment for unused sick leave in the case of a fire fighter, upon retirement or death, shall not exceed three (3) months' salary unless the city, by ordinance, authorizes a greater amount, but in no event to exceed four and one-half (4½) months' salary.

(d) Cities of the first class, cities of the second class and incorporated towns shall have the option of providing sick leave for fire fighters to accumulate at a rate of fifteen (15) working days per year beginning with the date of employment and decreasing to twelve (12) working days beginning four (4) years after employment. Unused sick leave shall accumulate to fire fighters provided with fifteen (15) and twelve

(12) working days per year sick leave to a maximum of one hundred (100) days.

History. Acts 1969, No. 393, §§ 1-3; 1971, No. 241, §§ 1-3; 1983, No. 842, §§ 1-3; 1985, No. 181, § 1; 1985, No. 240, § 1; 1985, No. 892, § 1; A.S.A. 1947, §§ 19-1718 — 19-1720; Acts 1987, No. 716, § 1; 1997, No. 412, § 1.

A.C.R.C. Notes. A comma following “second class” could not be inserted pursuant to § 1-2-303.

Publisher’s Notes. Acts 1969, No. 393, §§ 1-3, as amended, are also codified as § 14-52-107.

Amendments. The 1997 amendment substituted “Cities of the first class, cities of the second class and incorporated towns” for “Cities with populations of over seventy thousand (70,000) citizens” in (d).

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

CASE NOTES

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Constitutionality.

As to constitutionality of similar statute concerning payment for accumulated sick leave to police officers, see *City of Piggott v. Woodard*, 261 Ark. 406, 549 S.W.2d 278 (1977).

Days.

The term “working day” in this section must be construed to refer to an eight-hour day rather than a twenty-four hour shift. *Donaldson v. Taylor*, 327 Ark. 93, 936 S.W.2d 551 (1997).

In the city of Pine Bluff, in calculating sick leave under subsection (a) prior to January 1, 1993, a fireman working a twenty-four-hour shift who missed his or her entire shift due to illness was charged only one eight-hour day of sick leave; after January 1, 1993, the City’s new sick-leave policy, which conformed with this section’s language, redefined a sick day as eight hours, so that a fireman missing an entire twenty-four-hour shift would be charged three days of his or her accumulated sick leave. *Donaldson v. Taylor*, 327 Ark. 93, 936 S.W.2d 551 (1997).

The General Assembly enacted Acts 1983, No. 842, which amended this section, after the decision in *City of Fort*

Smith v. Brewer, 255 Ark. 813, 502 S.W.2d 643 (1973), where, in calculating firemen’s holidays, the statutory term “working days” was construed to mean an eight-hour day rather than a twenty-four-hour shift. *Donaldson v. Taylor*, 327 Ark. 93, 936 S.W.2d 551 (1997).

Pensions.

Word “salary” as used in § 24-11-818 providing that a retired fire fighter is entitled to be paid a monthly pension equal to one-half the salary attached to his rank does not include payment for unused accumulated sick leave. *Combs v. Cheek*, 283 Ark. 69, 671 S.W.2d 177 (1984).

Statutory language in § 24-11-818 providing that a retired fire fighter is “entitled to be paid a monthly pension equal to one-half of the salary attached to the rank” was first used in Acts 1921, No. 491, § 4; however, neither sick leave nor lump sum payment for unused accumulated sick leave was statutorily provided for fire fighters until 1971. Thus, the General Assembly could not have intended to include payment for unused accumulated sick leave in its 1921 concept of the word “salary.” *Combs v. Cheek*, 283 Ark. 69, 671 S.W.2d 177 (1984).

Cited: *City of Ft. Smith v. Brewer*, 255 Ark. 813, 502 S.W.2d 643 (1973); *Combs v. Cheek*, 283 Ark. 69, 671 S.W.2d 177 (1984).

14-53-109. [Repealed.]

Publisher's Notes. This section, concerning departmental promotions in commission government cities, was repealed by Acts 1993, No. 1121, § 1. The section was derived from Acts 1957, No. 138, §§ 1-5; A.S.A. 1947, §§ 19-2110 — 19-2113, 19-2113n.

14-53-110. Reimbursement of fire fighters.

Cities of the second class may reimburse a fire fighter for replacement of personal clothing destroyed during the performance of active service to a fire department.

History. Acts 1989, No. 180, § 1.

14-53-111. Bonus compensation plans.

Cities of the second class may through ordinance establish a bonus compensation plan for fire fighters eligible for retirement under the Firemen's Pension and Relief Fund Act, § 24-11-801 et seq., or under the Arkansas Local Police and Fire Retirement System Act, § 24-10-101 et seq., to encourage their continued service to the fire department.

History. Acts 1989, No. 181, § 1.

14-53-112. Fire marshal may be armed.

(a) For purposes of this section, "municipal fire marshal" means a person who holds a full-time office or position of fire marshal created by ordinance in a city of the first class, and who:

(1) Is responsible for the detection and prevention of arson, the enforcement of laws relating to arson and other burning, and enforcement of the city and state fire prevention codes;

(2) Has successfully completed a course of study for law enforcement officers approved by the Arkansas Commission on Law Enforcement Standards and Training;

(3) Has successfully completed an eighty-hour fire and arson investigation course offered by the National Fire Academy, or the Arkansas Fire Training Academy, or an equivalent course; and

(4) Has completed a one-week fire safety inspection class offered by the National Fire Academy, or the Arkansas Fire Training Academy, or an equivalent class.

(b) A municipal fire marshal is hereby authorized and empowered to carry a weapon and to make arrests for violations of the laws relating to arson and other unlawful burning.

History. Acts 1993, No. 1157, §§ 1, 2.

Cross References. Authority to arrest, § 16-81-106.

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